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EDWARD F. HASSEE, Complainant,	
v.	CFTC Docket No. 07-R26 Served via Federal Express
INTERNATIONAL COMMODITY CLEARING, LLC.; SULAIMAN "Sal" HUSAIN; MANSUR "Manny" HUSAIN; STEVEN IRVING ZANDER; SAMMY JOE GOLDMAN; LIBERTY REAL ASSETS INVESTMENT CORP.; BONNIE KRISTINA "Kristi" HAYNES; JOHN PETER GELARDI; CHRISTOPHER HAROLD HARRIS; and MELVIN DOUGLAS STECK, Respondents.	

DEFAULT ORDER

Introduction

Respondents International Commodity Clearing, LLC ("ICC"), Liberty Real Assets Investments Corporation ("LRA" or "Liberty"), Sulaiman "Sal" Husain, Mansur "Manny" Husain, Bonnie Kristina "Kristi" Haynes, Christopher Harold Harris, and Melvin Douglas Steck have failed to file answers to Edward Hassee's complaint, as amended and supplemented,[1] and thus are in default. Pursuant to CFTC rule 12.22(a), the defaults by ICC, Liberty, Sal and Manny Husain, Haynes, Harris and Steck constitute admissions of the allegations in the complaint, as

[1] "The pattern of conduct is distressingly familiar – find a lonely and vulnerable old man, shower him with attention, pitch the investments as high-return and practically risk-free, and then separate him from his money in ever increasing amounts, while pocketing tens of thousands of dollars in commissions." (Addendum to complaint.)

amended and supplemented, and constitute waivers of any decisional procedural afforded by the reparations rules on the facts set forth in the complaint, as amended and supplemented.[2]

As explained below, it has been concluded:

One, that Christopher Harris and Melvin Steck, working together, used a combination of high-pressure tactics, deceptions, and misrepresentations and omissions to perpetuate an egregious load and churn scheme, and convert $297,507 of Hassee's funds for the enrichment of themselves and the other respondents.

Two, that Kristi Haynes, the owner, president and compliance director of Liberty, aided and abetted Harris' and Steck's fraudulent scheme, and failed to diligently supervise Liberty, Harris and Steck.

Three, that Sal and Manny Husain, father and son and half of the quartet of owners that operated and controlled ICC and its predecessor firm:

- willfully associated ICC with Liberty, despite the fact that they knew, or should have known, via their firm's previous guarantee arrangement with Liberty, that the owners and managers of Liberty, and numerous Liberty associated persons including Harris, had extensive experience at numerous firms notorious for fraudulent, high-pressure sales tactics, and had been disciplined by the CFTC and the National Futures Association for those tactics;

- knew, or should have known, that ICC, and its predecessor firm National Commodity Corporation, had not instituted any system, enhanced or otherwise, to detect and prevent fraudulent sales and trading tactics by Liberty;

- knew, or should have known, via the ICC account application, that Hassee was an 80-year old novice trader, with a conservative investment profile, a net worth around $100,000, and annual pension income of about $50,000;

- knew, or should have known, via ICC daily equity runs, that Liberty and its agents were rapidly and aggressively converting exponentially increasing amounts of Hassee's funds via a load and churn scheme; and

[2]This default order is based on: one, Edward Hassee's initial complaint, addendum to the complaint, and motion to amend the complaint; two, Edward Hassee's two affidavits; three, Robert Hassee's affidavit; four, a cassette tape-recording, and typed transcript, of the Liberty account-opening compliance review for the Hassee account (exhibits to Robert Hassee's affidavit); five, the account statements for the Hassee account (produced by the receiver for Nations Investments, LLC, in response to a *sua sponte* subpoena); six, the Liberty and ICC account-opening documents signed by Hassee, and the equity runs for the Hassee account (produced by the Nations receiver); and seven, National Futures Association records.

- aided and abetted the fraudulent load and churn scheme, and failed to diligently supervise Liberty, by recklessly permitting the scheme to persist and expand, without making any meaningful inquiry or taking any remedial steps.

Four, that ICC is liable for the violations of Sal and Manny Husain, and that Liberty is liable for the violations of Harris, Steck and Haynes.

Five, that Hassee is entitled to a default award of $297,507, plus prejudgment interest.

This default award does not establish, or diminish, the liability of the three respondents – Sammy Joe Goldman, Steven Irving Zander, and John Peter Gelardi -- who have informed my office that they intend to file answers.

Factual Background

The Parties

1. Edward Hassee, a resident of Evansville, Indiana, at the relevant time – March and April 2005 -- was 80 years old and recently widowed. On his ICC account application, and during the *pro forma* tape-recorded account-opening review with Liberty's compliance director, Kristi Haynes, Hassee confirmed that he was 80 years old, that he had an MBA degree, that he had worked as a vice president of finance for a large pharmaceutical firm, that he received about $50,000 annually from his pension, that his net worth was "over $100,000," that he had a conservative approach to personal finances, and that he had invested in stocks and stock options, but had no experience with commodity futures and options and similar high-risk instruments. The tape-recording revealed Hassee to be intelligent and articulate, and to be enjoying a pleasant conversation with a younger woman. On the other hand, the recording clearly revealed that he had a diminished short-term memory, which contributed to his obvious confusion about matters such as the size of his deposit, the names of his brokers, and basic options terminology. The

recording also showed that Hassee did not remotely understand the mechanics of trading options, and that he made it explicitly clear to Haynes that he felt compelled to rely completely on Harris and Steck to select and monitor trades. The recording also substantiated Hassee's assertions, in his complaint and affidavits, that he had not received from Harris and Steck a fair, balanced and accurate explanation about the tremendous commissions that would be charged by Liberty and ICC, and about the specific extremely high risks associated with the dubious, commission-generating trading strategies that they would be recommending. Finally, the recording established that Haynes made no effort to cure Hassee's obvious ignorance and confusion about the specific risks and specific costs associated with the trading strategies that Liberty would be recommending.

2. ICC, located in Ft. Lauderdale, Florida, is a Florida corporation incorporated on November 14, 2003. ICC was registered as a futures commission merchant from April 29, 2004, to August 11, 2006. ICC carried and cleared the Hassee account for six weeks: from March 14, to April 28, 2005.

International Commodity Clearing, LLC is one firm in a string of southern Florida firms -- owned and controlled by the same set of men – that have been closely linked to several fraudulent schemes directed at the investing public. ICC was the successor to National Commodities Corporation ("NCC"). Similarly, Liberty Real Assets Investments Corporation ("LRA") was the successor to Liberty Financial Trading Corporation ("LFT"). NCC had carried and cleared customer accounts, and acted as the guarantor, for LFT from March 9, 2001, to May 28, 2004. NCC also had entered into a guarantee agreement with LRA from July 18, 2001, to May 28, 2004.

NCC was registered as a futures commission merchant from April 21, 1997, to July 7, 2004. During this time, NCC was named in 51 reparations complaints alleging fraudulent sales practices, and was named in two National Futures Association Business Conduct Committee complaints, and two CFTC injunctive actions, which alleged failure to supervise guaranteed introducing brokers that had engaged in fraudulent sales and trading practices. In June 2004, after it had settled the second NFA case, NCC ceased operations. At the same time, ICC commenced business, and took over NCC's offices, customer accounts and most of its introducing brokers. ICC's and NCC's owners and principals – Sal Husain, Manny Husain, Sammy Goldman, and Steven Zander – remained the same. ICC's and NCC's compliance director – Zander – remained the same. ICC continued to clear customer accounts introduced by LFT's successor, LRA, but on a non-guaranteed basis.

ICC's registration was suspended on August 11, 2006, for failure to pay a reparations award. ICC's business was taken over by Nations Investments, which operated out of the old NCC-ICC offices. On July 30, 2007, the U.S. District Court for the Southern District of Florida issued a restraining order freezing the assets of Nations, Sal Husain, and Sammy Goldman. According to the CFTC complaint, Nations had become undercapitalized by $4.5 million, due to $3.5 million in losses in the forex markets, exacerbated by $1 million in last-minute withdrawals by Sal Husain and Sammy Goldman. On August 7, 2007, the court approved the appointment of a receiver to marshal the assets of Nations.[3]

3. Sulaiman "Sal" Husain, a resident of Southwest Ranches, Florida, was a co-owner, and registered principal and associated person with NCC and ICC. The two NFA business conduct committee complaints against NCC concluded with consent orders finding that Sal Husain had failed to diligently supervise the activities of NCC's guaranteed introducing brokers. Before starting up NCC, he had been an owner and registered principal with American Financial Services, and American Financial Trading Corporation, both of which had been expelled from

[3] The responsibility of the receiver does not include the resolution of claims by ICC customers.

the futures industry for fraudulent sales and trading practices. Sal Hussain had been personally named and disciplined in two NFA disciplinary actions before Hasse opened his account in March 2005. He has not been registered since August 7, 2007.

4. Mansur "Manny" Husain, son of Sal and also a resident of Southwest Ranches, Florida, was a registered principal and associated person with NCC from May 2003 to July 2004, and with ICC from June 2004 to September 2005. Before working for NCC, he had worked as an unregistered employee for a string of firms which had been expelled from the futures industry for fraudulent sales and trading practices: American Futures Group; Commonwealth Financial Group; and American Financial Trading Corp. He is currently not registered.

5. Sammy Joe Goldman, a resident of Delray Beach, Florida, was an owner, and registered principal, of NCC and ICC. Before starting up NCC, he had been a registered principal or branch office manager with a string of firms, going back to the 80's, that had been expelled from the futures industry for fraudulent sales and trading practices, including: International Precious Metals Corporation; Multivest Options; Bachus & Stratton; Commonwealth Financial Group; and Cromwell Financial. Goldman had been personally named and disciplined in two NFA disciplinary actions before Hasse opened his account. He is currently not registered.

6. Steven Irving Zander, a resident of Boca Raton, Florida, was an owner, registered principal, and compliance director for NCC and ICC. Before starting up NCC, he had been a registered principal or branch office manager with a long string of firms that had expelled from the futures industry for fraudulent sales and trading practices, including: International Precious Metals Corporation; Multivest Options; and American Financial Trading Corp. Zander had

been personally named and disciplined in one NFA disciplinary action before Hasse opened his account.

On March 26, 2006, the NFA Business Conduct Committee issued a complaint alleging that Zander, in his capacity as ICCs compliance director, had failed to effectively screen prospective guaranteed introducing broker candidates to weed out potential problem firms, and had failed to implement any meaningful remedial training or enhanced supervisory measures for guaranteed introducing brokers with tainted owners and sales forces dominated by individuals who had been associated with firms that had been expelled or disciplined by the NFA or the CFTC. On February 22, 2007, the NFA issued a consent order that found that Zander had failed to diligently supervise ICC's guaranteed introducing brokers, and imposed on Zander a one year ban.

7. Liberty Real Assets Investment Corporation, a registered introducing broker located in Pompano Beach, Florida, introduced Hassee's account to ICC. As noted above, Liberty Real Assets Investment Corporation ("LRA" or "Liberty") was the successor corporation to Liberty Financial Trading Corporation ("LFT"). Of the 105 associated persons with LFT during its three year life, 50 had worked for firms that had been fined or expelled for fraudulent sales practices. Of the 39 associated persons whose registration was transferred to LRA when LFT ceased operations, 13 had worked for firms that had been fined or expelled for fraudulent sales practices.

LRA and LFT (collectively the "Liberty firms" or "Liberty common enterprise") were founded by Ted Romeo, who was the subject of a 2001 NFA disciplinary complaint against American Financial Trading, Sammy Goldman and Romeo, and the subject of a 2003 NFA disciplinary complaint against NCC, LFT, Sal Husain and Romeo, both alleging sales practice fraud. Romeo, the Liberty firms, Sal Husain and NCC would not challenge the assertions in a subsequent CFTC injunctive complaint that, from 2002 to 2004, over 96% of the Liberty firms' approximately 930 customers had lost money on their investments, and that customer losses had totaled at least $10 million, of which $6 million was attributable to commissions. In settlement of the second NFA complaint, Ted Romeo agreed to withdraw from principal status for a period of three years, commencing February 3, 2003. About two weeks before the bar was to take effect, Romeo assigned all of his interest in the Liberty firms to his wife Shauna.[4] In a third disciplinary complaint, the NFA alleged that Ted Romeo continued to act as a *de facto* principal who maintained the same desk and exercised control over of the firm's sales and trading practices. The NFA charged that LFT had failed to disclose Romeo as a principal and had permitted him to act as an unregistered associated person, and charged that NCC and Sal Husain had failed to diligently supervise LFT. On May 11, 2004, the NFA issued a consent order in which LFT, NCC and Sal Husain, without admitting or denying the alleged violations, consented to the findings that they had committed the alleged violations, and each consented to a fine of $75,000. Shortly afterwards, LFT ceased operations. At the same time, LRA commenced business, and took over LFT's offices, customer accounts, and all but three of its associated persons.

8. Bonnie Kristina "Kristi" Haynes, a Deerfield, Florida resident, was an owner, and registered principal and associated person with the Liberty firms from March 2002, to June 2005. During the relevant time, Haynes was Liberty's president and compliance director, and in that capacity conducted the scripted and recorded account-opening compliance review, and the initial

[4] It appears that the owners of the Liberty common enterprise compensated themselves with a large cut of the commissions. LFT and Romeo did not challenge the NFA's assertions, in the third complaint against Liberty, that during the first quarter of 2003, LFT had made about $1.1 million in commissions, and that, at the end of the quarter, Shauna was paid over $228,000 from LFT and Psalm One, a management company associated with LFT.

trade authorization, for the Hassee account. She presumably also conducted many of the subsequent trade authorizations for the Hassee account. Before working for the Liberty firms, she was an associated person with Barkley Financial Corporation and Group One Financial Services, both of which have been disciplined for fraudulent sales practices. She is currently not registered.

9. John Peter Gelardi, a resident of Oakland Park, Florida, was an owner, and registered principal and associated person with the Liberty firms from February 2002 to March 2006. During the relevant time, Gelardi was listed as the sales manager for Liberty. Before working for the Liberty firms, he was an associated person with Cromwell Financial Services, First Investors Group of the Palm Beaches, and American Financial Trading, all of which have been disciplined for fraudulent sales practices. He is currently not registered.

10. Martin Douglas Steck, a resident of Ft. Lauderdale, Florida, was a registered associated person with the Liberty firms from September 2003 to April 2006. He had no previous commodities experience. In contrast, Christopher Harold Harris had worked for nine years at a trio of firms that had been disciplined for fraudulent sales practices: Coastal Commodity Corporation, Commonwealth Futures Group, and Cromwell Financial. Harris, a resident of Boca Raton, Florida, was a registered associated person with the Liberty firms from May to October 2004, and again from January to August 2005. On October 14, 2004 – five months before Steck would introduce Harris to Hassee -- the NFA issued a sales practice complaint against Cromwell and various associated persons, including Harris, in which it alleged that Harris had engaged in fraudulent high-pressure sales tactics while employed by Cromwell. On August 31, 2006, Harris consented to various sanctions, including a one-year bar. Neither Steck nor Harris is currently registered.

Although Hassee cannot specifically recall the exact sequence in which Steck and Harris spoke to him during the swift solicitation and short life of his account, he plausibly recalls that both were unremittingly positive in their descriptions of significant matters such as their reliability and trading expertise, the likelihood of huge profits for each prospective trade, and the results of individual trades. It is not unusual for firms like Liberty to pair up an inexperienced broker with a more experienced broker. The junior broker acts as an "opener" by cold-calling a prospect, gaining his trust, convincing him to open an account with a relatively modest sum – in Hassee's case, $20,000, recommending the first trade – in Hassee's case, the purchase of 20 deep-out-of-the-money unleaded gasoline call options, and then introducing the new customer to the senior broker who is portrayed as a successful expert trader. The senior broker then takes the lead as the "loader." That is, after the first trade and initial deposit, the loader, using his expertise gained at boiler room operations, promises extravagant profits at little risk and pressures the customer to commit more and more funds. Harris' likely role as the lead broker is underscored by the fact it was Harris to whom Hassee addressed his letter, dated April 28, 2004 and drafted by Hassee's son, in which he instructed Liberty to close the account.[5]

Harris and Steck would convince Hassee to write six additional checks over four weeks -- all from a Treasury bill account at his local bank -- for a grand total of $708,725. When Hassee's son Robert discovered the scheme, he convinced his father to stop payment on a last check for $400,000. This would stop the financial hemorrhage, and reduce Hassee's total deposits to $308,725. Nonetheless, the fact that Harris and Steck could convince Hassee in short order to commit such a large sum of money, despite the fact that when he wrote the $400,00 check his account had realized $173,250 in net losses, underscores the duplicitous and voracious nature of their load and churn scheme. Together, Steck and Harris would recommend a series of

[5] Exhibit A to Robert Hassee affidavit.

short-term, multi-contract, option trades that generated $218,000 in commissions in just three weeks. These commissions would consume 70% of Hassee's total investment.

Fraudulent Solicitation

11. During the solicitation and trading of the account, Harris and Steck created the false impression that Hassee could reasonably expect to make substantial profits – much greater than he was realizing in his Treasury bill account -- at a cost of just $250 per trade, and that the risk of loss associated with their recommended trading strategies was remote. Harris and Steck said nothing that fairly and accurately reflected the underlying reality: one, that the principals and supervisors at Liberty and ICC had been disciplined multiple times for fraudulent sales practices and/or been associated with firms that had been similarly disciplined; two, that most of Liberty's customers had failed to enjoy profits and had lost most of their money; three, that Harris and Steck would be recommending trading strategies that would generate thousands of dollars in commissions per trade, by using a combination of a large number of contracts, out-of-the-money or deep-out-of-the-money options, options spreads, and quick roll-over, short-term trades; four, that Liberty's commissions would result in onerous commission-to-premium ratios (*i.e.*, break-even rates) ranging from 33% to 98%, which meant that the likelihood of profit was remote; five, that they would be advising Hassee to initiate trades before he had added sufficient funds; and six, that they would be urging him to invest ever increasing amounts of money, in total disregard of his financial status and investment objectives.

12. On March 11, 2004, Hassee agreed to open an account with respondents. Hassee signed a standard CFTC rule 1.55 risk disclosure statement; and an ICC "Additional Risk Disclosure Statement," provided to him because he was a novice trader, which focused on the general risks of trading futures and granting options. Hassee also initialed a "risk

acknowledgment" provision to the ICC customer agreement, which was limited to a discussion of the general risks of trading futures; and initialed a provision setting a one-year limitation on filing a suit, the sort of provision that the CFTC had previously found to be void and unenforceable.

Hassee also signed a Liberty "Notification of Fees and Charges" which was deceptively worded to create the impression that the commission would be $250 "per round turn," rather than <u>per contract</u>, per round turn. Haynes would perpetuate this deception during the scripted account-opening compliance review and the authorization for the first trade. During the authorization, Haynes told Hassee that he would pay a $250 commission, and pay a total of $1,006 per option. When he asked her about the total cost, she neither told him that the commissions would total $5,000, nor told him to calculate the total commission by multiplying $250 by the number of contracts (20).

Hassee: Now, that [the total cost] will be 20 times $1,005.

Haynes: That's exactly right.

Haynes did not appear particularly concerned or surprised when Hassee revealed that he neither remotely understood the mechanics of trading nor realistically grasped the extremely high risks associated with the trading strategies recommended by Liberty:

Haynes: Did your broker clearly explain the risks associated with options trading?

Hassee: Well, I guess so. Because, uh, he let me know that we don't always know which direction the wind's going to blow.

Haynes: Are you comfortable with his explanations?

Hassee: Yeah.

Haynes: Did he explain the terminologies for you? For instance, do you know the difference between a call and put option?

Hassee: Well. A call is one, uh, that you're taking the investment out of circulation.

Haynes: This is an easy way to remember it. A call is the type of option you invest in if you expect the market to go up. A put is the type of option you invest in if you expect the market to go down.

Hassee: Ok.

Finally, Hassee made it abundantly clear that he would be completely relying on his broker to select trades: "I've gotta get recommendations from somebody that knows more about it than I do. . . . I'm gonna be talking to an expert in this field and he'll give me fairly good recommendations."

Churning

13. Unfortunately, the trades recommended by Steck and Harris would be very good for respondents, but not at all good for Hassee. The first trade – the purchase of twenty deep-out-of-the-money unleaded gasoline call options -- set the pattern for the rest of the trades. Unleaded gasoline options are frequently touted in the spring by firms like Liberty, because brokers can claim that they know how to profit from the seasonal increase in price of gasoline as demand increases during the "summer driving season." Here, Steck and Harris guaranteed that Hassee would make money because the price of gasoline was certain to go "up and up." However, representations that one can profit from an ability to predict the market are deceptive, because well-known price movements and supply and demand forces in the underlying cash or futures market have already been incorporated into the premiums of options, and thus confer no advantage to retail customers, and because the price movement of the underlying cash commodity or futures market typically does not move in tandem with the price of an option,

especially an out-of-the-money option.[6] Steck and Harris did not tell Hassee that the commissions would total $5,000, that the options had to appreciate 33% merely to break even, or that they planned to close out the trade after just a few days.

On the second day, Hassee's June unleaded gas calls were trading a few ticks above the purchase price, but well below the break-even price. Nonetheless, Harris and Steck told him that he was seeing great profits because the price was going "up and up" as they had predicted. Harris and Steck used this report to urge Hassee to approve a second trade, the purchase of 58 Dow Average Index calls, which generated another $14,500 in commissions and required the deposit of an additional $49,300.

On the third day, Harris and Steck urged Hassee to liquidate the Dow trade for a quick profit. They confused Hassee, and exaggerated the size of the profit, by reporting that he had collected a $55,100 premium. They did not clearly explain the actual outcome of the trade: that is, the gross profit of $20,300 ($55,100 premium collected at the sale, minus the $34,800 premium paid at the purchase), and more importantly, the net profit of just $5,800 (gross profit minus the $14,500 in commissions). Harris and Steck then urged Hassee to approve using the just collected $55,100, to purchase 73 Euro FX calls, which generated $18,250 in commissions.

On the fourth day, Harris and Steck urged Hasse to liquidate the unleaded gasoline trade for another profit. They again confused Hassee, and exaggerated the size of the profit, by reporting that he had collected a $21,840 premium. They did not clearly explain the actual outcome of the trade: that is, the gross profit of $6,720, and more importantly, the net profit of just $1,720. Harris and Steck then urged Hassee to approve using the just collected $21,840, to purchase 29 Euro-Dollar puts, which generated $7,250 in commissions.

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[6] *See In re Staryk*, Comm. Fut. L. Rep. (CCH) ¶ 27,206 (CFTC 1997); and *In re JCC,* Comm. Fut. L. Rep. (CCH) ¶ 28,059 (CFTC 1994), *affirmed* 63 F.3d 1557 (11th Cir. 1995).

On the fifth day, Harris and Steck urged Hasse to liquidate the Euro calls for another profit. They again confused Hassee, and completely misled him about the results, by reporting that he had collected a $34,695 premium, without disclosing that he had actually realized a gross loss of $24,638 and a net loss of $42,938.

Harris and Steck would sustain this pattern for the next month, and would not be stopped until Hassee's son intervened. Typically, new trades required additional deposits to cover an account deficit, generated huge commission charges, and lasted for just a few days -- six of the ten option trades were held open for less than a week. Set out below is a summary of trading.[7]

In	*Out*	*Description*	*Gross P/(L)*	*Commission*	*Commission-to-Premium Ratio*	*Net P/(L)*
3/14	3/17	20 unleaded gas calls	$6,720	($5,000)	33%	$1,720
3/15	3/16	58 Dow Avg. index puts	$20,299	($14,500)	42%	$5,799
3/16	3/18	73 Euro FX calls	($24,638)	($18,250)	53%	($42,938)
3/21	3/23	50 Euro FX calls	($16,250)	($12,500)	48%	($28,750)
3/17,22	3/23	129 Euro Dollar puts	$34,750	($32,250)	45%	$2,500
3/24	4/25	150 T-bond put spreads	($58,597)	($60,000)	98%	($118,592)
3/29	3/31	50 T-bond calls	$19,531	($12,500)	37%	$7,031
3/31	4/25	70 T-bond calls	($25,531)	($28,000)	95%	($53,531)
4/7	4/25	10 Dow Avg. call spreads	($4,500)	($3,750)	68%	($8,250)
4/7	4/25	80 Dow Avg. call spreads	($32,000)	($31,250)	87%	($63,250)

[7] The *gross profit or loss* were reported in ICCs written account statements as "net premium collected" or "net premium paid." The *net profit or loss*, which was not reported in ICC's written account statements, is the sum of the gross profit or loss, and the commissions paid. The *commission-to-premium ratio*, based on the commissions paid to initiate a long option trade, or the net premiums paid to initiate an option spread trade, reflects the rate at which an option trade must appreciate to overcome the cost of the commissions and break even. A higher ratio indicates a greater barrier to potential profitability. As can be seen, the commission-to-premium ratios for the trades foisted on Hassee were very high. Thus, the likelihood that his funds would be rapidly depleted via commissions was very high.

14. Set out below is a summary of activity reported in ICC's daily equity runs for the Hassee account. The equity runs reported to ICC: one, that trades typically resulted in substantial debit balances; two, that during the first two weeks, Hassee had made ever larger deposits totaling $174,925, and had been charged $142,500 in commissions; three, that after one month, he had deposited $254,925, and had been charged $218,000 in commissions; and four, that after five weeks, he had added an additional $453,800, for a total of $708,725, which was far in excess of the "over $100,000" net worth reported by Hassee in his ICC account application.

Date	*Deposit*	*Cummu-lative Deposit*	*Commission*	*Cummu-lative Commission*	*Closing Cash Balance*	*Account LV*
3/11	$20,000	$20,000				
3/14			$5,000	$5,000	($120)	$15,084
3/15			$14,500	$19,500	($49,422)	$10,564
3/16	$49,300	$69,300	$18,250	$37,750	($47,249)	$4,199
3/17			$7,250	$45,000	$690	$38,540
3/18						$26,857
3/21	$30,625	$99,925	$12,500	$57,500	($28,025)	$12,662
3/22			$25,000	$82,500	($74,902)	$26,629
3/23	$75,000	$174,925			$38,294	$38,294
3/24			$60,000	$142,500	$155,479	$66,416
3/28					($7,649)	$55,633
3/29			$12,500	$155,000	($55,744)	$42,350
3/30						$100,836
3/31			$28,000	$183,000	($4,354)	$67,522
4/1						$68,614
4/4						$69,710
4/5						$72,052
4/6						$64,084
4/7	$80,000	$254,925	$35,000	$218,000	($858)	$118,986
4/8						$54,269
4/11	$53,800	$308,725			($874)	$95,163
4/12						$66,588
4/13						$57,169
4/14						$57,758
4/15						$35,432

4/18	($53,800)	$254,925		
	$400,000	$654,925	$345,317	$372,185
4/19				$368,322
4/20	$53,800	$708,725	$399,117	$418,529
4/21				$429,322
4/25				$410,828
4/26	($400,000)	$308,725	$10,818	$10,818
4/27				$10,818
4/28	($10,818)			

As can be seen, the account liquidating value was consistently less than the cumulative deposits. Thus, Harris' and Steck's regular reports to Hassee that the account was profitable were false and misleading.

Conclusions

Harris and Steck

Christopher Harold Harris and Melvin Douglas Steck, in violation of Section 4c(b) of the Commodity Exchange Act and CFTC rule 33.10,[8] intentionally defrauded Edward F. Hassee during the solicitation and the trading of his account, by grossly distorting the relative risks and rewards of following their trading advice, by lulling him into investing ever increasing funds and approving additional trades, and by churning his account.

During the solicitation and trading of the account, Harris and Steck created the false impression that Hassee could reasonably expect to make substantial profits – much greater than he was realizing in his Treasury bill savings account -- at a cost of just $250 per trade, and that

[8] Section 4c(b) provides that: "No person shall . . . enter into or confirm the execution of any transaction involving any . . . option . . . contrary to any . . . regulation of the Commission." CFTC rule 33.10 provides that: "It shall be unlawful for any person directly or indirectly -- (a) to cheat or defraud or attempt to cheat or defraud any other person; (b) to make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; (c) to deceive or attempt to deceive any other person by any means whatsoever -- in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option transaction."

the risk of loss associated with their recommended trading strategies was remote. Harris and Steck did not temper their enthusiastic representations to fairly and accurately reflect the underlying reality: one, that the principals and supervisors at Liberty and ICC had been disciplined multiple times for fraudulent sales practices and/or been associated with firms that had been similarly disciplined; two, that most of Liberty's customers had failed to enjoy profits and had lost most of their money; three, that Harris and Steck would be recommending trading strategies that would generate thousands of dollars in commissions per trade and tens of thousands of dollars in a few weeks; four, that Liberty's commissions would result in onerous commission-to-premium ratios ranging from 33% to 98%, which meant that the long-term likelihood of profit was remote; five, that they would be advising Hassee to initiate trades before he had added sufficient funds; and six, that they would be urging him to invest ever increasing amounts of money, in total disregard of his financial status and investment objectives. It is "rudimentary" that these types of misrepresentations and omissions about profit potential and risks are material.[9]

Hassee's decision to open the account, deposit additional funds and continue trading was consistent with his assertions that he relied on respondents' confident message that he would make quick and large profits with minimal accompanying risk and that he relied on their assurances that the account was profitable. The conclusion that Hassee reasonably relied on respondents' misrepresentations and omissions to his detriment is supported by the fact that he was an emotionally vulnerable recent widower, with diminished capacity and no experience trading commodity options.[10] Respondents' written disclosures of general risks by themselves did not cure the false impression of guaranteed large profits created by Harris and Steck, where

[9] *In re JCC, id.*, at 41,576 n.23.
[10] *See Ricci v. Commonwealth Financial Group, Inc.*, Comm. Fut. L. Rep. (CCH) ¶26,917, at 44,444 (CFTC 1996).

the overall effect of respondents' intentionally deceptive statements substantially outweighed and vitiated the written risk warnings.[11]

To establish churning, Hassee must show: one, that respondents "controlled" the level and frequency of trading in the account; two, that respondents chose an overall volume of trading that was "excessive" in light of his trading objectives; and three, that respondents acted with either "intent" to defraud, or in "reckless disregard" of his interests.[12] Since Hassee did not execute a written power of attorney, he must show that respondents exercised *de facto* control over the trading in his account. Evidence of the following factors will establish *de facto* control: (1) the customer lacks sophistication; (2) the customer lacks prior commodity option trading experience and devotes a minimum of time to trading the account; (3) the customer reposes a high degree of trust and confidence in respondents; (4) a large percentage of the transactions are based on respondents' recommendations; (5) the customer does not approve transactions in advance; and (6) the respondents do not provide full, truthful and accurate information prior to obtaining customer approval for transactions.[13] Here, the record shows that Hasse lacked the requisite trading knowledge or experience, and that he remained generally befuddled from start to finish. The recorded account-opening review established that Hassee would be placing a great deal of trust in Harris and Steck, and would invariably be accepting their recommendations. Finally, the record demonstrates that Hassee's acceptance of respondents' advice was influenced by their gross deceptions and distortions concerning the likelihood of profits, the results of trades and the status of the account.

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[11] *Ferriola v. Kearse-McNeill*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,172, at 50,153 (CFTC 2000). Similarly, Liberty's account-opening compliance review obviously was not designed to detect or cure the sort of fraud practiced by Fields and Campbell, and condoned and facilitated by Kennedy. *See JCC, Incorporated v. CFTC,* Comm. Fut. L. Rep. (CCH) ¶ 26,492, at 43,217-43,218 (11th Cir. 1995) (A perfunctory compliance review cannot be used as "advance exoneration" of fraudulent misrepresentations omissions).
[12] *Ferriola, id.*, at 50,154.
[13] *Id.*

Commission case law recognizes that customer objectives are one of the touchstones for an analysis of excessiveness.[14] Here, Hassee did not communicate a specific trading objective beyond an expectation of "fairly good recommendations" from an "expert in this field." It would be unreasonable to expect him to articulate much more of an objective given that: Hassee knew nothing about commodity options; Steck had cold-called him; Steck, Harris and Haynes left Hassee befuddled about the mechanics and specific risks of Liberty's trading strategies; and Steck, Harris and Haynes did not attempt to ascertain a more specific or sophisticated objective. In any event, the absence of a fully articulated specific trading objective does not justify the use of a trading strategy that emphasizes account executives' and firms' interests over the interests of their customer.[15] Here Harris and Steck recommended trading strategies that were patently designed to generate thousands and thousands of dollars in commissions in a short time, by using a combination of a large number of contracts; out-of-the-money or deep-out-of-the-money options; options spreads; and quick roll-over, short-term trades. The excessiveness is underscored by the fact that the commission-to-premium ratios, or break-even rates, ranged from 33% to 98%, which meant that the likelihood of profit was extremely remote; the fact that Harris and Steck routinely urged Hassee to initiate trades before he had added sufficient funds; and the fact that they repeatedly urged him to invest ever increasing amounts of money, in total disregard of his financial status and conservative investment philosophy.

The intentional nature of respondents' fraud is underscored by their exploitation of Hassee's vulnerability and lack of trading experience, their blatant disregard of his confusion and conservative financial objectives, their reckless indifference to the source of his funds, their failure to provide a fair and accurate disclosure of Liberty's oppressive commission structure,

[14] *In re Murlas Commodities, Inc.*, Comm. Fut. L. Rep. (CCH) ¶26,485, at 43,156-57 (CFTC 1985).
[15] *Ferriola, id.*, at 50,154.