UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of: U.S. SECURITIES & FUTURES CORP., HUAYA LU TUNG, NANCY A. BELLASSAI, JOHN O. HING, JIPING WU, THOMAS H. GONG JUSTUS ENTERPRISES, INC. and DANIEL G. REYNOLDS	CFTC Docket No. 01-01 OPINION AND ORDER

In the mid-1990s, a German commodity broker, Currency and Commodity Broker GmbH (CCB), perpetrated a trade-allocation fraud upon its managed account customers trading commodity futures and options on U.S. exchanges. German authorities brought a criminal action, and the mastermind of the fraud went to prison. The Commission subsequently brought an administrative enforcement case against a number of U.S. persons, alleging that they provided material assistance to CCB in carrying out its fraud. The Commission alleged that the respondents not only were aware of, but also participated in, the trade allocation scheme. During the course of investigating the allocation fraud, the Division of Enforcement ("Division") found evidence of unrelated reporting violations by one of the corporate respondents. The reporting violations form the basis of several charges in this case.

The Administrative Law Judge ("ALJ") found that the Division proved all charges against all respondents except one count concerning reporting violations, and a failure to supervise charge against one respondent. The ALJ dismissed the unproved charges and imposed sanctions in accord with his liability findings. Five respondents have appealed. For the reasons that follow, we affirm the decision below.

BACKGROUND

This proceeding began on October 26, 2000, when the Commission issued a six-count administrative complaint charging violations of the Commodity Exchange Act ("Act") and Commission rules by two corporations and eight individuals.[2] The complaint named as respondents two New York commodity firms, U.S. Securities & Futures Corp. ("USSFC"), a registered futures commission merchant ("FCM"); and Justus Enterprises, Inc. ("Justus"), an unregistered firm that allegedly acted as a commodity trading advisor ("CTA").

In addition, eight directors, officers and employees of the firms were charged. Individuals from USSFC included its president, Thomas V. White ("White"); vice president, Nancy A. Bellassai ("Bellassai"); chairman, Huaya Lu Tung ("Tung"); chief executive officer, John O. Hing ("Hing"); chief financial officer, Jiping Wu ("Wu"); and compliance officer, Thomas H. Gong ("Gong"). Individuals from Justus included its officer manager, Daniel G. Reynolds ("Reynolds"), and its assistant office manager, Michael R. Skrable ("Skrable"). Bellassai and Reynolds are husband and wife. The couple had a longstanding personal and business relationship with CCB principal Hennig Fasch ("Fasch").[3]

CCB opened an omnibus account with USSFC in late 1995, numbered 099-99000[4] on USSFC's books, and over the next three years opened several hundred subaccounts. As the subaccounts were opened under the main account, they were numbered consecutively 099-99001, 099-99002, etc. CCB placed trading orders with Justus, the New York CTA, and Justus in turn transmitted CCB's orders to USSFC for execution.

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[2] *See Complaint and Notice of Hearing Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, As Amended*, [2000-2002 Transfer Binder] Comm. Fut. L. Rep. ¶ 28,410 (CFTC Oct. 26, 2000) ("Complaint").

[3] Justus originally was established under the name "Fasch Enterprises, Inc." ("FEI") by CCB founder Fasch. FEI became Justus on April 21, 1998. Complaint at ¶ 12.

[4] In some documents of records, the main account is numbered 099-99001.

CCB allocated trades to individual subaccounts after the trades were executed, and the results known. As described in the complaint:

> After the positions were exited, [USSFC] . . . personnel, including Bellassai, compiled a list of the offsetting trades done for the CCB accounts, showing the trades' profitability. At various times during the trading day, but always after the trading results were known, these lists were faxed to CCB. CCB then faxed a list to USSFC indicating to which accounts the trades should be allocated (the "allocation fax"). USSFC personnel keypunched the CCB trading information into USSFC's accounting database directly from the allocation fax.

Complaint at ¶ 26. German authorities subsequently determined that the subaccounts belonged to individual customers, and that CCB allocated profitable trades to new accounts in order to persuade new "winning" customers to invest substantial additional sums, and losing trades to older ones.

The Division's case rests on the theory that "White, Bellassai and USSFC knew or recklessly disregarded the fact that these purported 'sub-accounts' represented individual customer accounts." Complaint at ¶ 21. Nevertheless, Justus (at CCB's direction) placed hundreds of unallocated trades each day through USSFC, and USSFC accepted orders from Justus without account identification, even when it was apparent that post-execution allocation of the trades was not fair or equitable.

Between 1996 and 1998, USSFC and Justus facilitated CCB in fraudulently allocating thousands of customer trades after they were executed, the complaint alleged. CCB and Justus obtained approximately $11 million in commissions on some 90,000 futures orders, while USSFC earned more than $2 million. At the same time, CCB's customers lost more than $19 million. Fasch was prosecuted criminally and sentenced to prison.

Based upon their participation in the allocation scheme, Justus and its assistant office manager, Skrable, were charged with violating Section 4b of the Act directly and with aiding and abetting CCB's violations of Section 4b. USSFC and its president and vice president, White and Bellassai, were charged similarly. Reynolds and Hing were charged with violating Section 4b as controlling persons of Justus and USSFC, respectively.[5]

The complaint also alleged that Justus, directly and as a principal, and Reynolds, Skrable, and Bellassai acted as unregistered CTAs in violation of Section 4m(1) (receiving compensation for providing trading advice to CCB customer accounts). The complaint alleged further that Justus, directly and as principal, and Skrable and Bellassai committed CTA fraud in violation of Section 4*o*(1) (advising accounts funded through CCB's fraudulent solicitation); and that Reynolds was liable as a controlling person for Justus's violations of Section 4*o*(1).

In addition, USSFC was charged with failing to report changes in its net capital in violation of Regulations 1.12(b) (failing to notify the Commission that its adjusted net capital fell below the early warning level), and Regulation 1.12(g) (failing to notify the Commission of a capital reduction of 20 percent or more). USSFC chief financial officer Wu was charged with aiding and abetting these reporting violations, while Hing and Tung (the chairman, principal, and majority interest holder of USSFC), were charged with liability for the reporting violations as controlling persons of USSFC.[6]

[5] See Complaint at ¶¶ 69-75 for a detailed listing of the various forms of derivative liability for fraud alleged against various respondents, including aiding and abetting in violation of Section 13(a) of the Act, liability as a controlling person in violation of Section 13(b); and liability of a principal for the acts of its agents, in violation of Section 2(a)(1)(A) of the Act and Commission Regulation 1.2.

[6] The complaint alleged further that USSFC compliance officer Gong violated Section 6(c) by filing a false Form 8-T with the Commission, which failed to disclose that USSFC terminated an employee after discovering that the employee improperly handled a customer account. USSFC was charged derivatively as Gong's principal and Tung and Hing were charged as controlling persons of USFFC. The ALJ dismissed this charge and the Division did not appeal.

Finally, all the USSFC respondents—Hing, Gong, Tung, Wu, White, Bellassai and USSFC itself—were charged directly or indirectly with violating the supervision requirements imposed by Regulation 166.3.

The complaint originally named ten respondents. Respondent Justus failed to answer the complaint, and by order dated February 2, 2001, the ALJ found it in default. He deferred the imposition of sanctions until the issuance of his initial decision. Skrable consented to a settlement order imposing sanctions and became a witness for the Division. *In re U.S. Securities & Futures Corp.*, [2002-2003 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,117 (CFTC July 26, 2002). White died a month later, on August 29, 2002. The Division subsequently filed a motion to dismiss the claims against him, which the ALJ granted on November 14, 2002. Tung failed to appear at the hearing and her answer to the complaint was stricken from the record. By order dated November 22, 2002, the ALJ granted the Division's motion for default judgment and found Tung liable as charged.

The ALJ's initial decision found Bellassai liable for fraud violations under Section 4b "in that she willfully defrauded CCB customers by knowingly participating in CCB's fraudulent allocation scheme." *In re U.S. Securities & Futures Corp.*, [2003-2004 Transfer Binder] Comm. Fut. L. Rep. ¶ 29,557 at 55,411 (ALJ July 25, 2003) ("I.D."). Bellassai also was found liable for CTA fraud under Section 4*o*(1) of the Act because she knowingly used the mails or other instrumentalities of interstate commerce to help CCB defraud customers; and for acting as an unregistered CTA in violation of Section 4m(1), because she received compensation for recommending trades for at least 58 accounts. *Id.* In addition, the ALJ found Bellassai liable for aiding and abetting CCB's and Justus's 4b fraud violations. *Id.* The ALJ found further that Bellassai failed to supervise USSFC employees in violation of Regulation 166.3. *Id.*

The ALJ found Hing liable as a controlling person for USSFC's 4b fraud violations and net capital reporting violations under Regulations 1.12(b) and 1.12(g). He also found that Hing violated Regulation 166.3. *Id.* at 55,411-12. Wu was found liable for aiding and abetting USSFC's net capital reporting violations; the ALJ dismissed the failure to supervise charge against him. Gong was found liable for failing to supervise USSFC employees. *Id.* at 55,412.

The ALJ found USSFC vicariously liable under as a principal for Bellassai's and Hing's fraud violations, and directly liable for net capital reporting violations under Regulations 1.12(b) and 1.12(g). USSFC was also found vicariously liable for Bellassai's, Hing's and Gong's supervision failures. *Id.*

Reynolds was found liable as a controlling person for Justus's 4b and 4*o* fraud violations because he "knowingly directed" Justus to participate in CCB's fraudulent allocation scheme. *Id.* at 55,411. He also was found liable under Section 4m for acting as an unregistered CTA because he received compensation for advising at least 167 CCB accounts.[7]

The ALJ issued cease and desist orders as to all appellants; ordered registrations of all appellants revoked; issued 10-year trading bans as to USSFC, Bellassai and Reynolds; and assessed civil monetary penalties. The Division did not file an appeal. Thus, five respondents and five charges remain under consideration now.

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[7] Justus, which defaulted, was found directly and indirectly liable for fraud under Sections 4b(a)(i) and 4b(a)(iii) of the Act for participating in CCB's fraudulent allocation scheme; liable for CTA fraud in violation of Section 4*o*; and liable for acting as an unregistered CTA in violation of Section 4m. Justus was ordered to cease and desist from further violations of the Act, prohibited from trading for 10 years and ordered to pay a civil monetary penalty of $919,174. I.D., ¶ 29,557 at 55,414. Tung, the other defaulting respondent, was found liable as a controlling person of USSFC for the firm's violations of Commission Regulations 1.12(b) and 1.12(g); and violations of Regulation 166.3 by the firm and Hing, Gong and Bellassai. Tung was ordered to pay a civil monetary penalty of $220,000 and was further ordered to cease and desist from committing further violations of the Act and regulations. *Id.* at 55,397.

Wu, who filed a notice of appeal but failed to perfect it, was ordered to cease and desist from further violations of Regulations 112.(b) and 1.12(g), and to pay a $50,000 civil monetary penalty. Wu submitted a Notice of Withdrawal of Appeal on November 4, 2003, stating his intent to pay the penalty imposed. Wu subsequently filed with the ALJ an "appeal for reduction in fine" on December 15, 2003. The ALJ denied his motion on December 17, 2003 for lack of jurisdiction, noting Wu's failure to perfect and appeal. Wu did not challenge the ruling.

DISCUSSION

Through stipulations and admissions, the parties largely agreed on the material facts in this proceeding. On appeal, therefore, the respondents focus on four legal issues:

- whether Regulation 1.35(a-1) (governing allocation of bunched orders) constitutes a defense to the fraudulent allocation findings;
- whether an omnibus account relationship between CCB and USSFC constitutes a defense to those findings;
- whether the ALJ erred when he denied a motion to reopen the hearing under Regulation 10.69; and
- whether the Division carried its burden of proof.

1. The provisions for allocating "bunched orders" contained in Regulation 1.35(a-1) do not constitute a defense to fraudulent allocation.

Regulation 1.35(a) generally requires "[e]ach futures commission merchant, introducing broker and member of a contract market [to] keep full, complete and systematic records, together with all pertinent data and memoranda, of all transactions relating to its business of dealing in commodity futures and options, and cash commodities." Regulation 1.35(a-1) specifies the type of record an FCM must "immediately" create when it receives a customer order. Among other requirements, the record must include "the account identification" for that customer *unless* the order is included in a "bunched order" for a group of customers. Regulation 1.35(a-1)(1). Regulation 1.35(a-1)(5) provides that "[s]pecific customer account identifiers for accounts included on bunched orders need not be recorded at time of order placement or upon report of execution" if certain requirements are met to assure fair and transparent post-execution allocation.

While the Division's case turned on the wrongful manner in which trades were allocated, it did not charge a violation of Regulation 1.35(a-1). The Division alleged that respondents' misconduct constituted fraud under Sections 4b and 4*o* of the Act, with the allocation scheme being the vehicle of the fraud. Respondents contend that their activities fell within the scope of 1.35(a-1) and therefore were lawful. Thus, they argue, their compliance with the rule provides a defense to the fraudulent allocation charges.

This argument fails for two reasons. First, respondents rely on the third and current version of the rule, which was not in effect during the relevant time period alleged in the complaint. In any event, respondents did not comply with any version of the rule. Second, regardless of which version of the rule applies, the complaint alleged—and the ALJ found—that the manner of allocation was designed to mislead CCB customers about the profitability of their positions in order to induce them to invest more money. Intentional, material deceit is unlawful whether or not respondents complied with the mechanics of the allocation rule.

Regulation 1.35(a-1) has been amended twice by the Commission since it was first adopted in 1972.[7] The current version of the rule—containing a broad allowance for post-execution allocation—did not come into effect until July 11, 2003.[8] The second version—with a narrower provision for post-execution allocation—took effect on October 26, 1998.[9] The relevant time period in the complaint ended in October 1998, and overlaps the second version of the rule by five days. Complaint at ¶ 1 (establishing the relevant period at issue "[f]rom early 1996 through October 1998"). Therefore, the first version, adopted in 1972, applies to all but five of the days relevant to this case.

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[7] Futures Commission Merchants and Members of Contract Markets: Recording of Customers' Orders, 37 Fed. Reg. 3802 (Feb. 23, 1972) (eff. Mar. 24, 1971) (Final Rule).

[8] Account Identification for Eligible Bunched Orders, 68 Fed. Reg. 34790, 34,792 (June 11, 2003) (Final Rules).

[9] Orders Eligible for Post-execution Allocation, 63 Fed. Reg. 45,699 (Aug. 27, 1998) (eff. Oct. 26, 1998) (Final Rules).

Under the first version of the rule, FCMs were required to prepare a written record of each customer order that included (1) an account identification number, (2) an order number, and (3) a timestamp recording the date and time the order was received. 37 Fed. Reg. at 3802. The rule made no provision for post-execution allocation in any circumstances.

The second version permitted post-execution trade allocations in limited situations. Under the second version, effective October 26, 1998, the rule permitted bunched orders for eligible customers to be placed on a contract market without specific customer account identification either at the time of order placement or at the time of report of execution. This second version limited post-execution allocation of bunched orders to sophisticated customers and required eligible account managers to make certain disclosures regarding the allocation methodology, the standard of fairness of allocations, and composite or summary data of the trades.

Under the 2003 version, the Commission relaxed many of the limitations imposed under the second. The third version expanded the availability of post-execution allocation to all customer accounts, delineated the division of duties between brokers and trading managers, and generally simplified the process.

Although respondents' briefs do not address retroactivity, their contention that Regulation 1.35(a-1) provides a defense impliedly argues that the current version of the rule should be applied retroactively to them. Because that version became effective nearly five years after the time period relevant to this case, it cannot possibly control the disposition of the principal issues on appeal. Retroactivity is not favored in the law. "[C]ongressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (citations to other authority omitted). "By the same principle, a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms." *See Brimstone R. Co. v. United States*, 276 U.S. 104, 122 (1928) ("The power to require readjustments for the past is drastic. It . . . ought not to be extended so as to permit unreasonably harsh action without very plain words."). *Id.*

The Commission adheres closely to retroactivity principles. When Congress amended the Act in 1992 to eliminate the requirement that civil monetary penalties not exceed a respondent's net worth, the Commission declined to apply the amendment to conduct occurring before its effective date. *In re Gordon*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,667 at 40,182 n.5 (CFTC Mar. 16,1993); *accord, In re First National Trading Corp.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,142 at 41,789 (CFTC July 20, 1994); *see also Khorram Properties, LLC v. McDonald Investments, Inc.*, [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,145 (CFTC Oct. 13, 2005) (declining to give retroactive effect to Section 2(g) of the Act, added in 2000).

Regulation 1.35(a-1) affords respondents no defense apart from consideration of retroactivity principles. The 1998 and 2003 versions of the rule require any post-execution method to be fair and to be disclosed before any permitted allocation occurs, and the 1972 version requires pre-execution allocation: the account identification number must be recorded "immediately upon receipt" of a customer's order. 37 Fed. Reg. at 3802. The trade allocation method used in this case fails on both scores: it was neither fair, nor disclosed and therefore subject to subsequent verification. Respondents never explain how CCB's method of allocation passes muster under any version of the rule.

The appealing respondents also are wrong when they argue that the third version exonerates them because it delineated the recordkeeping responsibilities of omnibus accounts between FCMs and account managers, thus, they argue, relieving FCMs of the duty to assure fair allocation. In this regard, respondents point to preamble language accompanying the 2003 amendment indicating that the third version "clarifies the respective responsibilities of account managers and FCMs" such that "[a]ccount managers are responsible for the allocation of bunched orders, not FCMs." 68 Fed. Reg. at 34,792, *quoted at* USSFC App. Br. at 15; *see also* Bellassai App. Br. at 5. They argue that by adopting the third version the Commission agrees with their position that respondents were not responsible for ensuring that CCB's allocations were fair. That responsibility, they contend, belonged solely to CCB. Respondents find support for this argument in the initial decision itself, which states:

> In large measure the Division was successful in proving its case by reason of Regulation 1.35, a rule promulgated in the early 1970s by the predecessor of this agency. . . . The newly revised Regulation 1.35 now permits, with customer consent, the bunching of orders by an eligible account manager, with post-execution allocation trades. The new rule reduces transparency by eliminating the audit trail of a specific customer's order prior to the ex-pit allocation. The new rule also relieves FCMs of any responsibility for ensuring fairness of allocation and instead imposes this duty on account managers. Thus had the events at issue occurred after June 11, 2003, the date the modifications were promulgated, the case at bar would take on a very different hue.

I.D., ¶ 29,557 at 55,412, *quoted in* USSFC App. Br. at 13.

The respondents (and the ALJ) overlook what the Commission specifically stated in the preamble to the 2003 rule revision:

> All FCMs will continue to have responsibility to monitor for unusual account activity. As noted in the proposed release, an interpretive notice accompanying N[ational] F[utures] A[ssociation] Compliance Rule 2-10, states that "[t]he FCM has certain basic duties to its customers, including the duty to supervise its own activities in a way designed to ensure that it treats its customers fairly. Specifically, *an FCM would violate this duty if it has actual or constructive notice that allocations for its customers may be fraudulent and fails to take appropriate action.*

> An FCM with such notice must make a responsible inquiry into the matter and, if appropriate, refer the matter to the proper regulatory authorities.

68 Fed. Reg. at 34792 (emphasis added).

The respondents in this case had ample notice that individual customers were being abused through CCB's trade allocation. Most telling is the fact that the newer accounts, with the higher account numbers, profited at the expense of older accounts with lower numbers, suffered. *See generally* I.D., ¶ 29,557 at 55,399-402 (setting forth the ALJ's factual findings numbered 19-47, containing detailed descriptions of CCB's unorthodox allocation instructions, carried out by USSFC, that should have prompted further inquiry); *see also* Declaration of Division expert Daniel Driscoll, also describing the allocation scheme). In short, rather than vindicating respondents, the Regulation 1.35(a-1) issue actually bolsters the Division's case.

2. CCB's account at USSFC was not a bona fide omnibus account.

Throughout these proceedings, respondents have contended that because CCB maintained an omnibus account with USSFC rather than individual customer accounts, respondents owed no duty to CCB customers to assure their fair treatment. This argument is wrong on the law and the facts.[11]

The argument rests on the faulty premise that the Commission is bound by a party's self-serving characterization of its transactions. *See, e.g., In re Precious Metals Associates, Inc.*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,882 (CFTC Aug. 14, 1979). Rather than accepting a party's characterization at face value, however, the Commission looks to the facts and circumstances with the goal that form should not be disregarded for substance. *Id.*

[11] Respondents characterize this proceeding as an attempt by the Commission to impose a new standard of conduct with respect to omnibus accounts by treating them as if they were introduced accounts. Such an attempt, they argue, constitutes improper rulemaking. Even if this characterization were assumed to be correct, the law supports the Commission. An agency is free to interpret its governing statutes and rules on a case-by-case basis rather than by rulemaking. *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 292-94 (1974); *SEC v. Chenery Corp.*, 332 U.S. 194, 201-03 (1947). In doing so, it may announce and apply a new standard of conduct. *Chenery*, 332 U.S. at 203.

The expert testimony of National Futures Association ("NFA") compliance official Daniel Driscoll ("Driscoll"), which the ALJ credited, establishes that CCB's account was not an omnibus account as the term is understood in the industry.[12] Most damaging to the respondents is the evidence of "red flags" highlighted by the Division, leading to the conclusion that the numerous "subaccounts" in the omnibus account were individual customer accounts. The untoward circumstances are unmistakable: the large number of "subaccounts," which were opened at a rate of 25 or more each month and depleted quickly; allocation of winners to new accounts; the fact that separate financial statements were prepared for each subaccount and that no such statements were prepared for the omnibus account as a whole; and the fact that CCB trades were documented and handled differently than those of other USSFC accounts.

When the years of close personal and business ties between Fasch in Germany and Bellassai and Reynolds in the United States are added, the evidence leads to the conclusion that the CCB account was an omnibus account in name only. Looking past that label to what the facts actually show, the subaccounts were individual customer accounts to each of which USSFC owed a separate fiduciary duty, which it breached.

Even if the Commission accepted respondents' characterization that a bona fide omnibus account was involved here, the legal consequence argued by the defense fails. The existence of an omnibus account does not shield the FCM carrying that account from liability to the customers who hold beneficial interests in the account. *See Gasner v. Stotler & Co.*, 671 F. Supp. 1187, 1192 (N.D. Ill. Oct 21, 1987) ("[M]erely because the plaintiffs' accounts were omnibus

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[12] The CFTC Glossary defines "omnibus account" as:

> An account carried by one Futures Commission Merchant, the carrying FCM, for another Futures Commission Merchant, the originating FCM, in which the transactions of two or more persons, who are customers of the originating FCM, are combined and carried by the carrying FCM. Omnibus account titles must clearly show that the funds and trades therein belong to customers of the originating FCM. An originating broker must use an omnibus account to execute or clear trades for customers at a particular exchange where it does not have trading or clearing privileges.

accounts does not shelter [the FCM] from liability under either an agency relationship or direct liability for its own actions."). Respondents' omnibus account defense lacks merit on the law and facts, and should be rejected.

3. The Fasch Deposition

Respondents also claim that Fasch provided exculpatory evidence that exonerates them. This argument fails for several reasons. On July 30, 2001, the ALJ granted respondents' motion to depose Fasch, the principal of CCB, through written interrogatories. Fasch was serving time in a German prison. On August 15, 2001, respondents filed the interrogatories and on August 27, 2001, the Division filed its "Cross-interrogatories to be propounded to Hennig Fasch" along with its "Objections to Respondents' Interrogatories to be propounded to Hennig Fasch."

On the first day of the hearing, July 29, 2002, Fasch's deposition was marked as "Exhibit 400" for identification. During the hearing, the Division's attorney examined respondent Reynolds concerning Exhibit 400 and Exhibit 468. Upon the completion of her examination of respondent Reynolds regarding these exhibits, the Division's attorney moved to introduce "Exhibit 400" into the evidence. *See* Tr. at 260. The ALJ asked for objections, and hearing none, stated that the exhibit was admitted. At this point, according to the respondents, the Fasch deposition was irretrievably admitted to the record. The Division's attorney then offered Exhibit 468 into evidence. The ALJ asked for objections and hearing none, he stated it was admitted. *Id.* at 261.

The Division's attorney immediately informed the ALJ that she made a mistake in reading the exhibit number and had meant to introduce only Exhibit 468, not Exhibit 400. The ALJ then stated "Exhibit 468, not 400. Fine. Now we'll go off the record." *Id.*

More than six months later, respondents filed a Petition to Reopen Hearing on February 12, 2003 to admit the Fasch deposition. The Division filed its objection to the petition and the ALJ denied respondents' motion on February 21, 2003. In his ruling, the ALJ indicated that the record spoke for itself and that respondents' counsel was present in the courtroom at all relevant times.[13] Later, in the Initial Decision, the ALJ stated that Fasch was neither a party nor a witness in this case. I.D., ¶ 29,557 at 55,398 (Finding of Fact 9). He noted that Fasch's deposition was not offered into evidence at trial and therefore was not considered as evidence. *Id.* at n.37.

Respondents claim it was error for the ALJ to "withdraw" Exhibit 400 from the hearing record. They claim they were unaware that this exhibit was being withdrawn and state they have no recollection of the later portion of the exchange between the Division's attorney and the ALJ. They claim to have a good faith basis to believe that Exhibit 400 remained in the record. They point to the fact that they referred to this exhibit in their pre-hearing memorandum filed over two weeks earlier on July 12, 2002.[14] They further claim that they had reasonable grounds for not moving to admit the Fasch deposition during their case-in-chief.

Respondents' counsel argues that the record fails to show that Exhibit 400 was "explicitly withdrawn" from the record, and that the ALJ failed to inform them that Exhibit 400 was being withdrawn. Accordingly, they argue that they had no opportunity to object and therefore should not be prejudiced by their failure to raise any objection under Regulation

[13] On February 24, 2003, respondents moved to certify the question for interlocutory review, which the ALJ denied. On March 5, 2003, respondents filed their application for interlocutory review with the Commission. The Commission denied interlocutory review of the ALJ's denial order. *See In re U.S. Securities & Futures Corp.*, [2003-2004 Transfer Binder] Comm. Fut. L. Rep. ¶ 29,489 (CFTC May 12, 2003) (order denying interlocutory review).

[14] While Respondents make reference to the Fasch deposition in their post-hearing brief and in their proposed findings of fact and conclusions of law, both filed January 22, 2003, no reference is made to Exhibit 400. References are made only to the numbered responses in the deposition.

10.67(c).

Under Regulation 10.69, a party seeking to reopen must show that (1) the evidence is relevant and material; and (2) reasonable grounds exist to explain the failure to adduce the evidence at the time of hearing. ALJs have considerable discretion in determining whether to grant a Regulation 10.69 motion. *See In re Ferragamo*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,982 (CFTC Jan. 14, 1991). Such motions should be granted only in extraordinary circumstances where the nature of the supplemental evidence is such that it would probably change the result. Cumulative or impeaching evidence is insufficient.

Our review establishes that the ALJ acted within his broad discretion when he denied the motion to reopen. While we believe that respondents have failed to show reasonable grounds for their never having offered what they regard as a crucial exhibit at any time during their case-in-chief, we have reviewed the deposition and find that most of it is cumulative and of little probative value for the defense case. The deposition stands as a statement against Fasch's interest and corroborates the Division's case regarding the fraudulent allocation scheme. The statement is exculpatory in that Fasch asserts (1) that respondents never were told about USSFC's fraudulent intent; (2) that the allocation scheme facilitated the fraud and enhanced CCB's gains, but was not an essential element; and (3) that the distribution of winning trades to newer accounts and losing trades to older accounts was not forced on USSFC's attention because on many days there were no winning trades.

The exculpatory weight nevertheless is weakened by the lack of an arms-length relationship between Fasch and respondents, given their longstanding social ties, which provided a motive to benefit them at no expense to himself, and Fasch's general lack of credibility, as evidenced by his fraudulent conduct. More important, undisputed evidence of how respondents handled the CCB account undercuts any suggestion that they were innocent bystanders to CCB's fraud. The Division's case rests on circumstantial evidence, largely evidence of the back-office paper trail developed in the United States. The case is built on repeated "red flags" announcing an ongoing fraud. Whether Fasch directly informed respondents of his fraud does nothing to undermine the probative value of the Division's "red flag" evidence. Admission of the deposition would not have changed the result reached in the initial decision.

Similarly, we believe respondents' argument fails under Regulation 10.67(c). Respondents bore the burden of proof of their defense, including the burden of production. Respondents contend on appeal that they did not to introduce the deposition into evidence themselves because they believed the Division already had done so. The Division promptly corrected its erroneous identification of the exhibit it wished to make part of the record. Respondents' counsel no doubt erred in good faith in overlooking the significance of the Division's correction, but the Commission is not obliged to correct the mistake.

4. Sufficiency of the Evidence

Respondents' final line of argument challenges the sufficiency of the evidence: whether the Division proved its case as to each respondent on each count. The ALJ noted the thoroughness of the Division's proposed findings in reaching his initial decision. I.D., ¶ 29,557 at 55,397 n.8. Likewise, the Division's defense of the initial decision in its answering brief thoroughly addresses how it carried its burden of proof. For the purposes of this memorandum, we adopt those points, with emphasis on the following.

First, we agree with the Division that the ongoing relationship between spouses Bellassai and Reynolds on the one hand, and Fasch on the other, provides context that adds weight to the Division's circumstantial evidence case. These background facts go far toward taking this case out of the typical, arms-length relationship that normally prevails between a clearing broker and its clients. The Division's expert witness, Driscoll, pointed out how the CCB account differed from ordinary omnibus accounts, although respondents repeatedly referred to the account as such. As discussed earlier, an omnibus account is not immune from the supervisory and other legal requirements that all commodity professionals must follow. The principle that an omnibus account is not a license to dispense with self-regulatory vigilance is a particularly apt here, since the record shows that numerous "red flags" were raised under the watch of several market-experienced and well-trained commodity professionals in New York over an extended period of time.

Second, the fact that the CCB account constituted 30 percent of USSFC's business is crucial, because the account's prominence position in USSFC's affairs undermines respondents' argument that the "subtleties" of this fraud could be ascertained only after-the-fact with "20/20" hindsight. Third, it is apparent that the respondents knew that this trading involved managed accounts where total control over customer trading decisions rested exclusively with the respondents.

The Division's circumstantial evidence case nevertheless suffers the following weakness, to which respondents give great prominence on appeal: *to wit*, USSFC's allocation system was reviewed by NFA auditors and Commission personnel and effectively "blessed" by these oversight bodies. The reviews were more than cursory, respondents assert. Respondents argue that if the Commission and NFA were not alerted to the fraud, why should they be blamed for missing it as well.

The personal relationship and longstanding business ties that Bellassai and Reynolds maintained with Fasch limit the force of the argument as to them; it has more resonance when raised by Hing and Gong. Nevertheless, the failure of oversight authorities to spot the fraudulent allocation does not excuse Hing's and Gong's lax supervision of trading done by a customer that generated 30 percent of USSFC's income. In any event, the fact that regulatory audits did not reveal the fraud in no way estops the Commission from taking subsequent enforcement action to remediate it.

An audit, no matter how thorough, is no substitute for vigilant supervision by persons charged with this duty. The importance of ongoing, onsite supervision by firm officials is underscored by the nature of this fraud, which unfolded day-by-day, as new accounts opened, thrived briefly on winning trades, succumbed to losers, and ceased trading. This kind of fraud is much more likely to be discovered through onsite monitoring than through the sampling procedures employed in an audit. The primary fraud perpetrated by CCB went forward under the willingly or recklessly blind eyes of the respondents.

As we have said in other cases, which involved wash sales, when customer orders reasonably raise concerns about their lawfulness under the Act, the futures professionals who accept or monitor the orders have a duty of further inquiry. *Cf. In re Three Eight Corporation,* [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,749 at 40445-46 (CFTC June 16, 1993) (finding that the receipt of paired orders for matching executions demanded clarification before execution); *In re Piasio*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,276 at 50,689 (CFTC September 29, 2000) (account executive has a duty to inquire about customer's intent when he receives simultaneous orders to buy and sell the same spread). The same principle applies here. Regulation 1.35(a-1), which authorizes relaxed procedures for processing and allocating bona fide bunched orders, provides no shield against liability in the face of ongoing, systematic fraudulent allocation.

For the foregoing reasons, the appealing respondents are liable directly or indirectly for fraud under Section 4b, as charged in Count I of the complaint. For the same reasons, Bellassai and Reynolds are liable for CTA fraud as charged in Count III. *See, e.g., In re R&W Technical Services*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,582 at 47,745 (CFTC Mar. 16, 1999) ("Because we have found that [respondents] violated Section 4b(a) of the Act and that they acted as CTAs, further analysis is not needed to conclude that [respondents] also violated Section 4*o*(1) of the Act.").[14]

As to Bellassai's and Reynolds's failure to register as CTAs, as charged in Count II, Section 4m(1) of the Act provides that an advisor must register unless the CTA has not advised more than 15 persons in the past 12 months and does not hold himself out generally to the public as a CTA. The reasoning in *CFTC v. Savage*, 611 F.2d 270 (9th Cir. 1979) governs, as we reaffirmed in revising our regulations regarding commodity pool operators and commodity trading advisors in 2003.[15] *See* Additional Registration and Other Regulatory Relief for Commodity Pool Operators and Commodity Trading Advisors; Past Performance Issues, 68 Fed. Reg. 47221 (CFTC Aug. 8, 2003) (Final Rules).

With respect to Count V, we find little argument has been raised as to liability findings regarding the Regulation 1.12 violations, probably owing to the stipulations concerning the evidence on these charges. As such, we deem the issue admitted under Commission Regulation

[14] The Division states in its answering brief that it is not clear why the ALJ found Reynolds liable on Count III under Section 4*o* based on his capacity as controlling person of Justus rather than directly liable under Section 4*o* on his own conduct. The Division has not appealed and we do not address this question other than to observe that a review of the Complaint reveals that the only charge against Reynolds under Count III was liability on the controlling person theory and no separate charge of direct liability was alleged. *See* Complaint at ¶ 83; Div. Ans. Br. at 46 n.28.

[15] In *Savage*, the Court held that under Section 4m(1), "the persons to whom an advisor 'furnishes' advice" includes "customers of an advisee when the advisor knows or should know that advice he gives is directly passed to those customers." *Id.* at 280. The advisee in *Savage* was a corporation—*i.e.*, an "entity" client—that was registered as an FCM with the Commission.

10.102(d)(3), and summarily affirm the liability findings against USSFC and Hing conclusions below without discussion. We adopt the ALJ's findings of fact and analysis as our own.

Similarly, with respect to Count VI, no doubt exists that USSFC and its personnel wholly failed to have adequate supervisory systems in operation and each failed in his or her respective duty to supervise under the facts of this case. We summarily affirm the findings below as to them (including the ALJ's dismissal of this count as to Wu), and adopt the ALJ's findings of fact, particularly the findings numbered 48-54, and the analysis below, as our own. With respect to Count IV against USSFC (filing a false report on Form 8-T), the Division has not appealed the ALJ's dismissal of this charge. Consequently, the dismissal of this count stands.

5. Sanctions

As noted above, the ALJ issued cease and desist orders as to all appealing appellants, revoked their registrations, and imposed 10-year trading bans against USSFC, Bellassai and Reynolds. He imposed the following civil monetary penalties: USSFC, $2,052,680; Bellassai, $440,000; Hing, $220,000; Gong, $110,000; and Reynolds, $500,000.

USSFC states that it appeals the civil monetary penalty as excessive, but that it "does not appeal" the other sanctions. USSFC App. Br. at 5. The other respondents argue that all of the sanctions are overly severe, arguments resting largely on the premise that the ALJ's liability findings are unwarranted. Several respondents note also that Skrable, who settled, received comparatively mild sanctions (a $12,500 penalty and a two-and-a-half year trading ban). The Division's answering brief argues that settlements as a matter of law are not are comparable to adjudicated with regard to sanctions imposed. The Division also characterizes Skrable as a "subordinate" participant in the scheme.

Sanctions in enforcement proceedings are imposed "to further the Act's remedial policies and to deter others in the industry from committing similar violations." *In re Volume Investors Corp.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,234 at 38,679 (CFTC Feb. 10, 1992). In selecting the appropriate sanctions in a particular case, the Commission takes into account the ALJ's assessment of the gravity of a respondent's violations[17] as well as the sanctions imposed in the initial decision. Nevertheless, the Commission's review of the relevant factual issues is *de novo* and reflects its independent judgment about the appropriate mix of sanctions. *In re Grossfeld,* [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,921 at 44,467 (CFTC Dec. 10, 1996), *aff'd sub nom. Grossfeld v. CFTC*, 137 F.3d 1300 (11th Cir. 1998).

Gravity of the Violations

A sanctions analysis begins with a determination of the gravity of the violations. We consider first the underlying conduct's relationship to the regulatory purposes of the Act. *In re Premex*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,165 at 34,890 (CFTC Feb. 17, 1988). Generally, violations of the "core provisions" of the Act warrant more serious sanctions. Fraud is one such core provision. Section 3(b) of the Act, 7 U.S.C. § 5(b), specifically identifies the "protect[ion] of all market participants from fraudulent or other abusive sales practices and misuses of customer assets" as one of the Act's central purposes. *See, e.g., In re Nikkhah,* [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,129 at 49,892 (CFTC May 12, 2000) (addressing the gravity of fraud).

Supervisory failures and any failure to register are only slightly less serious. Both thwart the "system of effective self-regulation of . . . market participants and market professionals under the oversight of the Commission," which is the first listed purpose of the Act in Section 3(b).

[17] Gravity refers to the seriousness of a violation. *In re Gordon,* [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,326 at 42,592 (CFTC Mar. 6, 1995).

See CFTC v. British American Commodity Options Corp., 560 F.2d 135, 139-40 (2d Cir. 1977), *cert. denied*, 438 U.S. 905 (1978):

> The intent of the congressional design is clear; persons engaged in the defined regulated activities within the commodities business are not to operate as such unless registered, the Commission is charged in the first instance with determining the applicant's qualifications and whether proper grounds exist for refusing registration, and the Commission is empowered to seek injunctive prohibitions against violations of any provisions of the Act, including registration provisions. Registration is the kingpin in this statutory machinery, giving the Commission the information about participants in commodity trading which it so vitally requires to carry out its other statutory functions of monitoring and enforcing the Act.

See also Adoption of Customer Protection Rules, 43 Fed. Reg. 31,886, 31,889 (July 24, 1978) (Final Rules) (promulgating Regulation 166.3 to establish a general supervision requirement for CFTC registrants to provide greater protection for customers of commodity firms).

Reporting failures, while serious, are lower in gravity, because reporting requirements are ancillary to the Act's core regulatory provisions. *Premex*, ¶ 24,165 at 34,890-91.

Having addressed the general gravity of the violations at issue, we turn to the second inquiry in a sanctions analysis and focus on the facts and circumstances of the particular case. In making this inquiry, the Commission often considers whether a respondent's conduct was knowing and whether a respondent cooperated with authorities following discovery of his violations or undertook other steps to ameliorate the harm flowing from the violations. *Grossfeld*, ¶ 26,921 at 44,467-68 and nn.29- 31.

In addition, the Commission has looked at whether the violative conduct was isolated or continuous, the length of time the violative conduct continued, the number of customers affected, the financial benefit to the respondent, and the financial harm to customers. *Id.* Finally, the Commission considers evidence that a respondent may offer to show that the gravity of his violations was mitigated or that there has been a change in his conduct since the time of his violations. *Piasio*, ¶ 28,276 at 50,691.

The record indicates that Bellassai and Reynolds, her husband, were knowing participants in unlawful conduct, and Bellassai's knowledge is imputed to USSFC. Bellassai, in concert with persons Reynolds and Skrable at Justus, and with CCB, intentionally engaged in a fraudulent allocation scheme over an extended period of time that resulted in significant gains to respondents at the expense of customers. Gong and Hing were, if not knowing, reckless in the extreme, and enjoyed the profits of Bellassai's misconduct. The fraud was systematic, beginning in 1996 and ceasing only when German criminal authorities shut down CCB in 1998. The impact of respondents' fraudulent scheme was significant, involving several hundred individual subaccounts through which millions of dollars were traded and $19 million in customer funds were lost.

Civil Monetary Penalties

With regard to civil monetary penalties, the Act requires the Commission to consider the "appropriateness" of a civil money penalty to the "gravity" of a respondent's proven violations. The Act authorizes alternative approaches for determining the maximum monetary penalty for a particular respondent. Under Section 6(c), the Commission may impose a penalty of not more than the higher product of (1) $100,000 times the number of a respondent's proven violations; or (2) three times respondent's "monetary gain" from the proven violations. The maximum civil monetary penalty permitted under the Act's $100,000 per violation test is subject to adjustments for inflation, based on when the violative conduct occurred. Commission Regulation 143.8. Pursuant to the rule, for violations "committed between November 26, 1996 and October 22, 2000," the maximum penalty is $110,000 per violation, or triple a respondent's gain. Regulation

143.8(a)(1)(i). The violations in this case were committed from "early 1996," Complaint at ¶ 1, when the unadjusted $100,000 maximum was in force, through October 1998.

Because the gains accruing to individual respondents from their misconduct are not established with precision on the record, we affirm the civil monetary penalties based on the per violation alternative of the Act. The complaint alleges that each transaction at issue constituted a separate violation, and there were 90,000 transactions. Thus, the approximately $2 million penalty assessed by the ALJ against USSFC results in a very low per violation amount yet is large enough to capture the gravity of the conduct and to serve as a deterrent. In affirming the amount, we also take into account USSFC's failure to supervise and reporting violations.

We similarly affirm the $440,000 penalty against Bellassai and the $500,000 penalty against Reynolds, the principal individual wrongdoers. Both engaged directly and/or indirectly in fraud and each advised dozens of accounts without registering as CTAs; in addition, Bellassai failed to supervise those reporting to her. The amounts imposed are amply justified on the record on this case.

Hing was assessed $220,000, reflecting his vicarious liability for fraud, his failure to supervise the company he ran, and his vicarious liability for USSFC's reporting violations. The Hing penalty reflects primarily his ongoing supervision failure over several years, and his derivative liability for fraud that affected hundreds of customers. It also captures his comparatively minor reporting violations.[19] The $110,000 penalty assessed against Gong for failure to supervise is warranted based on the duration of the failure, the number of customer accounts involved and the number of fraudulently allocated transactions. Gong, as compliance

[19] USSFC's undercapitalization went unreported for 35 days in 1997, but never posed a threat to the market. USSFC was charged with five instances of failing to report quarterly capital declines of 20 percent or more, but was found liable for only three instances. One such instance occurred for a reporting period soon after CCB was shut down, and its cash flow to USSFC disrupted.

officer, warrants a lesser penalty for failure to supervise than Hing, his superior. Based on the foregoing, the penalties assessed against Gong and Hing are affirmed.

We note the significant disparity between the penalties we affirm today and the $12,500 assessed against Skrable, the respondent who settled and cooperated with the Division. We find wholly unpersuasive the Division's arguments minimizing his role, since Skrable was charged with fraud under Sections 4b and 4*o*, as well as acting an unregistered CTA under Section 4m. The disparity in our view is not adequately explained by the fact that Skrable agreed to settle and cooperate. Nevertheless, the exercise of prosecutorial discretion respecting Skrable does not bind us in reviewing sanctions imposed on the other respondents.

<u>Cease and Desist Orders</u>

A cease and desist order is appropriate where there is a reasonable likelihood that a respondent will repeat his wrongful conduct in the future. *Piasio,* ¶ 28,276 at 50,692. In general, evidence of a knowing violation or a pattern of violative conduct is sufficient to support an inference that it is likely wrongful conduct will be repeated. *Id.* Here the record shows both that respondents acted knowingly or recklessly and that they repeated their violative conduct for nearly three years. Respondents' arguments that they are unlikely to repeat the violations found because revised Regulation 1.35(a-1) permits post-execution allocation are misplaced. As stated earlier, this case did not allege allocation violations. This case principally is about fraud, the vehicle for which was an omnibus account. The cease and desist orders prohibit further violations of the Act's antifraud provisions by any means. In these circumstances, imposition of cease and desist orders is appropriate and the initial decision's imposition of such orders is affirmed.

Registration Revocations

The ALJ revoked the registrations of all appealing respondents. A review of current registration records, however, reveals that registrations for Bellassai, Gong and Hing terminated shortly before the initial decision was issued, and that only USSFC and Reynolds remain registered. The Commission does not terminate nonexistent registrations. *In re Commodities International Corp.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,943 at 44,566 (CFTC Jan. 14, 1997); *In re Newman*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,356 at 39,191 (CFTC Aug. 6, 1992). Therefore, the revocation sanction is vacated as to Bellassai, Gong and Hing. Should any of these respondents reapply for registration, they must overcome the presumption of unfitness arising from the statutory disqualifications to which they are subject on account of the findings in this case.

USSFC does not appeal revocation of its registration. Because the record establishes that Reynolds violated provisions of the Act involving fraud, he is statutorily disqualified from registration under Section 8a(2)(E). Reynolds presented no evidence of mitigation or rehabilitation to rebut his presumptive unfitness and to demonstrate that he would not pose a substantial risk to the public if he remained registered. He contends only that the sanctions imposed should be vacated in their entirety because the ALJ erred in finding him liable for any of the conduct charged, a position we have rejected. In light of the gravity and duration of Reynolds's violations, revocation is appropriate to protect the public interest. The ALJ's order revoking Reynolds's and USSFC's registrations is affirmed.

Trading Prohibitions

Trading prohibitions are appropriate when the record shows that a respondent's misconduct represents an inherent threat to the integrity of the futures markets in the public eye.

In re Miller, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,440 at 42,914 (CFTC Jun. 16, 1995). The term of the prohibition turns on the gravity of the violations. *Id.* The Commission also takes into consideration any evidence of mitigation or rehabilitation in assessing trading prohibitions. *In re Staryk*, [2003-2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,826 at 56,452 (CFTC July 23, 2004).

When a clearing FCM and persons acting in concert with it allow an omnibus account to be used as an instrument of fraud, the public has good reason to distrust the markets. A scheme such as this, requiring concerted action along a chain of intermediaries—CCB, Justus and USSFC—exposes a fault line in the self-regulatory systems on which the market relies. The breach of trust is best repaired by restricting the fraudulent actors' access to the markets for a period of time commensurate with their conduct. Accordingly, the 10-year trading prohibitions imposed by the ALJ against USSFC, Bellassai and Reynolds are affirmed.

We have considered all other arguments respondents raise on appeal and reject them as lacking merit without the need for extended discussion.

CONCLUSION

For the forgoing reasons, the initial decision with respect to respondents USSFC, Bellassai, Hing, Gong and Reynolds, including the sanctions imposed therein, is affirmed, *except as modified herein* by our vacatur of that portion of the initial decision revoking the registrations of Bellassai, Hing and Gong. The initial decision with respect to Justus became final on August 25, 2003, and with respect to Tung, on September 11, 2003. The initial decision with respect to

Wu is hereby declared final *nunc pro tunc* as of November 12, 2003, the date his notice of withdrawal of appeal was received.

IT IS SO ORDERED.[18]

By the Commission (Chairman GENSLER and Commissioners SOMMERS and CHILTON, Commissioner DUNN not participating).

David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: October 7, 2009

[18] Sanctions shall become effective 30 days after the date this order is served. A motion to stay any portion of this order pending reconsideration by the Commission or judicial review shall be filed and served within 15 days of the date that this order is served. *See* Commission Regulation 10.106, 17 C.F.R. § 10.106.