

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:)	CFTC Docket No. 01 - 08
)	
Michael H. Varner)	AMENDED COMPLAINT AND NOTICE
)	OF HEARING PURSUANT TO
335 Godwin Street)	SECTION 6(c), 6(d) and 8(a)(4)
Memphis, TN 38111)	OF THE COMMODITY
)	EXCHANGE ACT, AS AMENDED
)	
)	
Respondent.)	
)	

The Commodity Futures Trading Commission (“Commission”) has received information from its staff, which tends to show, and the Commission’s Division of Enforcement (“Division”) alleges that:

I.
SUMMARY

1. On June 4, 1999, the Commission issued an Opinion and Order Accepting Offer of Settlement of Michael Varner (the “Order”), which placed certain restrictions on Varner’s registration and trading activities for two years. *In re Michael Varner*, Comm. Fut. L. Rep. (CCH) ¶27,673 (CFTC June 4, 1999).

2. The Order restricting Michael Varner’s floor broker registration included, but was not limited to, provisions (1) prohibiting Michael Varner (“Varner” or “Respondent”) from

directly or indirectly trading on behalf of customers; (2) requiring that Varner clear all his trades through MBF Clearing Corp. (“MBF”); and (3) prohibiting Varner from directly or indirectly acting as a principal, partner, officer, or branch office manager of any entity registered or required to be registered with the Commission.

3. Varner has violated each of these provisions. First, from at least June 4, 1999, Varner has been trading on behalf of at least one customer, Delta Capital Fund (“Delta Capital”), a limited partnership in which Varner owns a 25% share. Second, Varner did not clear the trades for this account through MBF as required by the Order. Third, Varner violated the Order by acting as a principal in Varner Brokerage Co., Inc. (“Varner Brokerage”), a registered introducing broker (“IB”), throughout the restricted registration period, acting as a branch office manager at Varner Brokerage until at least March 2000, and acting as President of Hunter Trading, Inc. (“Hunter Trading”), a registered Commodity Trading Advisory (“CTA”), until at least September 2000. Accordingly, Varner violated Section 6(c) of the Commodity Exchange Act (“Act”), as amended, by violating the Order.

II. **PROPOSED RESPONDENT**

4. **Michael H. Varner** resides at 355 Goodwyn Street, Memphis, Tennessee 38111. Varner has been registered as a floor broker, trading on the New York Cotton Exchange, since July 8, 1987. On June 4, 1999, the Commission issued an Order placing certain restrictions on Varner’s floor broker registration for a period of two years. Varner is registered as an Associated Person (“AP”) of Varner Brokerage, in which he currently holds a nine percent interest. From

about December 1997 to about March 3, 2000, Varner had been working at the Memphis branch of Varner Brokerage as the branch office manager. From May 1992 to at least October 2000, Varner was the sole proprietor and President of Hunter Trading, a registered CTA.

III. FACTS

5. On January 28, 1999, the Commission filed a Notice of Intent to Suspend, Revoke or Restrict Michael Varner's Registration as a Floor Broker pursuant to Sections 8a(3)(M) and 8a(4) of the Act. Through his counsel, Varner submitted an Offer of Settlement that was accepted by the Commission. The Commission entered an Order, dated June 4, 1999, which placed certain restrictions on Varner's registration and trading activities for two years.

Varner's violation of customer trading restriction

6. Paragraph 2 of the Order states that "Varner shall not directly or indirectly trade on behalf of customers." Varner has made trading decisions and placed orders on behalf of Delta Capital.

7. Delta Capital is a limited partnership in which Lester Smith, a customer of Varner Brokerage, owns a 50% interest, Varner owns a 25% interest and Varner's family members, Bryan Varner, H. Rogers Varner and Mary Helen Varner, together own the remaining 25% interest. Varner Brokerage is the general partner of Delta Capital. Delta Capital is a "customer" under Section 1.3(k) of the Regulations promulgated pursuant to the Commodity Exchange Act (the "Act"). Therefore, when Varner traded for Delta Capital, he traded on behalf of customers.

Violation of the clearing restriction

8. Paragraph 3 of the Order states that “Varner agrees to clear all his trades through MGF Clearing Corp.” “MGF” is a misprint and it should read “MBF,” the firm that cleared his trades on the NYCE.

9. Varner did not clear his trades for Delta Capital through MBF, but rather through a different futures commission merchant, Refco, Inc.

Violation of the provision restricting Varner from holding a position as principal, partner, officer or branch officer manager of a registered entity.

10. Paragraph 5 of the Order states that “Varner shall not directly or indirectly act as a principal, partner, officer, or branch office manager of any entity registered or required to be registered with the Commission.” Varner has violated this provision of the Order in several ways.

11. From about May 7, 1992 until about October 18, 2000, Varner acted as the President and sole proprietor of Hunter Trading, a registered CTA. Thus, for at least 16 months during the period of his restricted registration, from June 1999 through October 2000, Varner was an officer of an entity registered with the Commission in violation of the Order.

12. From about December 1997 to about March 3, 2000, Varner was the sole registered employee of Varner Brokerage at the Memphis branch office. Varner acted as the branch office manager from on or about June 4, 1999 to on or about March 3, 2000.

13. Throughout the period of his restricted registration, Varner has continued to act as a principal in Varner Brokerage. As such, he researches and writes for *Cotton Row Journal*, a publication issued by Varner Brokerage, and he talks to at least two Varner Brokerage customers

about cotton prices and business conditions. He also takes orders, receives fills and reports trading results to customers.

IV.

VIOLATION OF THE COMMISSION ORDER AND SECTION 6(c) OF THE ACT

14. The allegations contained in paragraphs 1 through 13 are re-alleged and incorporated herein by reference.

15. Varner has violated three separate provisions in the Order: (a) the prohibition against directly or indirectly trading on behalf of customers; (b) the requirement that Varner clear his trades through MBF Clearing Corp.; and (c) the prohibition against directly or indirectly acting as a principal, partner, officer or branch office manager of any entity registered or required to be registered with the Commission.

16. By violating the Order, Varner has violated Section 6(c) of the Act.

V.

By reason of the foregoing allegations, the Commission deems it necessary and appropriate, pursuant to its responsibilities under the Act, to institute a public administrative proceeding to determine whether the allegations set forth in Parts I-IV are true, if so, whether an appropriate order should be entered in accordance with Sections 6(c), 6(d) and 8a(4) of the Act, 7 U.S.C. §§9, 15, 13(b), and 12(a)(4) (1994), as amended by the Commodity Futures Modernization Act of 2000 (“CFMA”).

- a) Directing that Respondent cease and desist from violating the provisions of the Act set forth in Parts I-IV of the Complaint;

- b) Prohibiting Respondent from trading on or subject to the rules of any registered entity and requiring all registered entities to refuse Respondent all privileges thereon;
- c) Suspending, revoking or restricting Respondent's registration;
- d) Assessing a civil monetary penalty in an amount of not more than \$110,000 or triple the monetary gain to the Respondent for each violation of the Act.

VI.

WHEREFORE, IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the allegations set forth in Sections I-IV above be held before an Administrative Law Judge, in accordance with the Commission's Rules of Practice under the Act (the "Commission's Rules"), 17 C.F.R. §§ 10.1 et seq., at a time and place to be set as provided by Section 10.61 of the Commission's Rules, 17 C.F.R. § 10.61, and that all post-hearing procedures shall be conducted pursuant to Sections 10.81 through 10.107 of the Commission's Rules, 17 C.F.R. §§ 10.81-10.107.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Complaint within twenty (20) days after service, pursuant to Section 10.23 of the Commission's Rules, 17 C.F.R. § 10.23, and shall serve two copies of such Answer and of any documents filed in these proceedings upon Charles J. Sgro, Regional Counsel, and Linda Y. Peng, Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, One World Trade Center, Suite 3747, New York, New York 10048 or upon such other counsel as may be designated by the Division. If Respondent fails to file the required Answer, or fails to appear

at a hearing after being duly served, Respondent shall be deemed in default and the proceedings may be determined against such Respondent upon consideration of the Complaint, the allegations of which shall be deemed to be true.

IT IS FURTHER ORDERED that this Complaint and Notice of Hearing shall be served upon Respondent personally or by registered or certified mail, pursuant to Section 10.22 of the Commission's Rules, 17 C.F.R. § 10.22.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of the investigative or prosecutorial functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon this matter except as witness or counsel in proceedings held pursuant to notice.

By the Commission.

Edward W. Colbert
Deputy Secretary to the Commission
Commodity Futures Trading Commission

Date: June 1, 2001