



**U.S. COMMODITY FUTURES TRADING COMMISSION**

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
www.cftc.gov

Office of Proceedings

RECEIVED  
C.F.T.C.  
2007 OCT -14 A 9:04  
OFFICE OF PROCEEDINGS  
PROCEEDINGS CLERK

---

RICHARD R. MEYER and SUZANNE MEYER,  
individually, and as trustees of  
RICHARD R. MEYER AND SUZANNE MEYER  
AB LIVING TRUST,  
Complainants,

v.

RANDY BLAIR PIXLEY, and  
PIXLEY CAPITAL MANAGEMENT,  
Respondents.

---

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

CFTC Docket No. 06-R011

**INITIAL DECISION**

*Appearances:*

Robert Thompson, Esq., San Francisco, California, for complainants

Alfred Lakritz, Esq., Encino, California, for respondents

*Introduction*

Richard and Suzanne Meyer's complaint arises from their decision to open a partially funded account managed by Randy Pixley. The Meyers allege a variety of disclosure, fiduciary and supervisory violations. Their core allegations are: that Pixley precluded them from making an informed decision by failing to disclose the tremendous margin and leverage risks associated with funding a \$200,000 nominal account with \$60,000 in actual funds, including the risk that a sharp price movement would wipe out the margin deposit; and that Pixley recklessly traded the

partially funded account at an excessively high level, and with one set of trades wiped out almost all of their investment.<sup>1</sup> In reply, Pixley denies any violations. Pixley concedes that he did not directly and explicitly advise the Meyers that partially funding the account would increase “by several multiples” the margin and leverage related risks associated with his “aggressive” trading system.<sup>2</sup> However, he asserts that he did provide equivalent disclosure through various documents provided by the introducing broker that had helped the Meyers select Pixley: the Pixley Capital Management disclosure document, a set of account statements for one of Pixley’s proprietary accounts, a due diligence interview prepared by the introducing broker, and standard written risk disclosure statements provided by the futures commission merchant.<sup>3</sup> Pixley also asserts that he traded complainants’ account “no differently” than his other clients’ accounts,<sup>4</sup> and asserts that the National Futures Association had audited his operation soon afterwards and concluded that his disclosure document was “completely in compliance with NFA rules and regulations.”<sup>5</sup> As explained below, after carefully reviewing the parties’ documentary evidence and oral testimony, it has been concluded that complainants are entitled to an award of \$26,820.<sup>6</sup>

---

<sup>1</sup> Complaint, at ¶¶29i, 29j, 34, and 35; Meyers’ pre-hearing memorandum of facts and law, at pages 7-10; and Richard Meyer’s testimony at pages 85-86 of hearing transcript.

<sup>2</sup> Pixley’s testimony, at pages 121-132, and 143-144, of hearing transcript.

<sup>3</sup> Amended Answer, at ¶8 in §II, ¶¶8-10 in §III, ¶¶3-10, and 13, in §IV, and ¶10 in §V; and Pixley’s response to Suzanne Meyer’s Interrogatories 6-9.

<sup>4</sup> Amended Answer, at ¶¶14, 25 and 27 in §IV; Pixley’s response to Suzanne Meyer Interrogatories 13 and 16; and Pixley’s testimony, at page 101 of hearing transcript.

<sup>5</sup> Amended Answer, at ¶4 in §V; Pixley’s response to Suzanne Meyer Interrogatories 8 and 24; and Pixley’s testimony, at pages 97-101, and 144-145, of hearing transcript.

<sup>6</sup> In less than 48 hours, over three days of trading, complainants lost \$56,820. Just before filing the reparations complaint, complainants settled their dispute with the account executive, John Michael Connor, the introducing broker, Institutional Advisory Services Group, and its owner, Perry Jonkheer, who collectively paid a total of \$30,000. These payments reduced complainants’ out-of-pocket losses to \$26,820.

## Factual Findings

### *Parties*

1. Complainants Suzanne Meyer and Richard Meyer, 77 and 63 years old, respectively, are retired residents of Aptos, California. Before retiring, Suzanne had been employed as a travel agent, and Richard had been employed as a senior product manager for various high tech firms. Richard had about six years experience in stocks and bonds. Richard's testimony, although occasionally self-serving, overall was credible and convincing, and revealed him to be an intelligent individual with noticeable analytical skills. Since Richard Meyer took the lead in decisions and communications with respondents, references in this decision are to him.

Meyer's commodity futures experience was negligible. A week or two before he deposited \$60,000 into the account managed by respondents, Meyer had invested \$125,000 with Wall Street Fund III ("WSF"), which is a fund of commodity trading advisors. During the first month, the WSF account lost about \$4,000. However, Meyer would not receive the written month-end statement, which reported the loss, until after he had opened the account managed by Pixley.

Meyer had become interested in commodity futures after he had read literature that advised diversification of investment portfolios, and determined that he should "smooth out" the Meyers' portfolio by devoting a portion of the portfolio to commodity futures. At the time that Meyer opened the account to be managed by Pixley, he was planning to commit an additional \$50,000 to a second trading advisor. He also understood that trading futures involved a higher level of risk than trading stocks. However, Meyer had concluded that Pixley could at least partially mitigate the risks, based on past performance charts in Pixley's disclosure document which showed consistent, and impressive, profits, albeit over a short period of time; based on

Pixley's assurances in a "Due Diligence Questionnaire" that monthly draw downs over 20% were "rare;" and based on assurances by John Connor, who had helped Meyer select Pixley, that Pixley would take steps to avoid margin calls.<sup>7</sup>

2. Respondent Pixley Capital Management LLC ("PCM") is a registered commodity trading advisor ("CTA") located in Thousand Oaks, California. Respondent Randy Blair Pixley is a registered principal and associated person with PCM, a one-man operation with two support employees. Pixley managed the Meyers' account pursuant to a managed account agreement and power of attorney. However, Pixley relied on Perry Jonkheer, the owner of the introducing broker, and John Connor, an agent for the futures commission merchant, to handle the account opening and all communications with Meyer. Thus, Pixley would not directly communicate with Meyer until Jonkheer set up a conference call after Pixley's trades had wiped out the Meyers' account.<sup>8</sup>

Pixley undermined his credibility by testifying that an NFA audit had found only minor technical problems with PCM's disclosure document.<sup>9</sup> This testimony was contradicted by a letter from the NFA to Pixley -- belatedly produced by Pixley after the hearing -- in which the NFA reported the results of the audit. Contrary to Pixley's assertions, the NFA audit, conducted a couple of months after the disputed trades in the Meyers' account, had found two significant disclosure deficiencies during the relevant time, including a deficiency that related directly to the

---

<sup>7</sup> Suzanne Meyer's testimony at pages 5-9, and 11-18, and Richard Meyer's testimony at pages 19-20, 25-27, 50-54, 68-69, 77-78, 81-86, and 92-94, of hearing transcript; Richard Meyer's affidavit, at ¶¶ 3-13; Client Information Questionnaire (Exhibit 2 to Answer); Declaration of Trust (Exhibit 14, respondents' Requests for Admissions); and WSF Subscription Agreement, signed April 1, 2004, letter from Buckley to Meyer confirming receipt of \$125,000 check, dated April 23, 2004, and WSF April monthly account statement (Exhibit 8 of respondents' document production, dated March 29, 2007).

<sup>8</sup> Richard Meyer's testimony at page 24, and Pixley's testimony at pages 97-101, 107-111, 115-116, 119, 121-125, and 127-137, of hearing transcript; Pixley's responses to Richard Meyer Interrogatories 1-7, and 15; pages 1-6, and 9-12, of PCM Disclosure Document, dated March 15, 2004 (exhibit A to Richard Meyer affidavit dated April 5, 2007); PCM Managed Account Agreement (exhibit 3 to Answer); Power of Attorney (page 14 of Man Financial account-opening package, attachment 17 to respondents' Requests for Admissions); Amended Answer, at ¶¶ 8-10 in §III, ¶¶ 4-9 in §IV, ¶¶ 20-24 in §V; and NFA records.

<sup>9</sup> Pixley's testimony at pages 97-101, and 137-143, of hearing transcript.

Meyers' dispute with Pixley: the failure by PCM, for each partially funded account, to obtain a written confirmation that contains the nominal account size agreed to by the client and the CTA.<sup>10</sup>

Throughout this proceeding, Pixley repeatedly asserted in his defense that the NFA audit had found no deficiencies in his disclosures to clients and prospective clients during the relevant time: *i.e.*, late April and early May 2004.<sup>11</sup> Nonetheless, Pixley only reluctantly and belatedly produced the letter from the NFA that reported the purportedly favorable audit. In response to an order compelling production -- before the hearing -- of a class of documents that included the NFA's audit letter, Pixley had replied, without explanation, that he could not readily access any of the documents, because they were "in storage" in Simi, California. Pixley eventually produced the NFA audit letter, after I had advised him at the hearing that if he did not produce the letter I would ask the NFA to produce the letter. Soon afterwards, Pixley found the NFA letter stored on the hard drive of his personal computer.

In that letter, dated October 5, 2004, the NFA confirmed: one, that the audit had been conducted in late June; two, that the exit interview had been conducted in late July; three, that during the exit interview, NFA had shared "key findings" with Pixley, including that PCM had not maintained the written confirmation for each partially funded account required by NFA rule 2-34, and that the rate of return information for customer performance in the PCM disclosure document was inaccurately disclosed because it included a proprietary account;<sup>12</sup> and four, that

---

<sup>10</sup> NFA compliance rule defines "nominal account size" to be "the account size agreed to by the client that establishes the level of trading in the particular trading program." During the course of this proceeding, the parties frequently used the terms "nominal" and "notional" interchangeably.

<sup>11</sup> See Amended Answer, at ¶2 in §V; and Pixley's replies to Suzanne Meyer interrogatories 1, 10 and 11.

<sup>12</sup> By Notice dated January 20, 2004, the NFA announced that it had adopted revisions to compliance rule 2-34, which would become effective on May 1, 2004, *i.e.*, just after the Meyers had opened the account and deposited \$60,000 (April 29<sup>th</sup>), and just before Pixley made the first trade for their account (May 3<sup>rd</sup>). Rule 2-34 requires, for each partially funded account, that a CTA: one, obtain a *written confirmation* which must contain the name or description of the trading program and the nominal account size agreed to by the client and the CTA; and two

Pixley had corrected these deficiencies in subsequent disclosure documents, which he had forwarded to current customers for a new round of disclosures and signatures. Thus, Pixley's assertion that the NFA had found his disclosures to be "compliant" may have been technically correct, since he had corrected the deficiencies by October 2004. However, when viewed in light of the fact that the NFA in July 2004 had verbally told Pixley that his disclosures had not been compliant during the same time that he had traded the Meyers' account, Pixley's assertion that he had been found in compliance during the relevant time was inaccurate and disingenuous.

3. Thomas Geatley Buckley, Jr., at the relevant time, was a registered principal and associated person with Allied Brokers, LLC, doing business as A Wall Street Fund, a registered commodity pool operator in San Diego, California. As noted above, a week or two before they opened the account managed by respondents, the Meyers had invested \$125,000 in a fund operated by Buckley. Buckley also endorsed the Meyers' selection of Pixley and PCM, by stating that he had invested funds with PCM.<sup>13</sup> Neither complainants nor respondents called Buckley to produce written or oral testimony.

4. Institutional Advisory Services Group, Incorporated ("IASG"), located in Glen Ellyn, Illinois, is a registered introducing broker, commodity trading advisor and commodity pool operator. IASG "assists clients in selecting advisors that best match their risk tolerance and

---

provide a "*brief explanation* regarding the effect of partial funding on margin and leverage." The NFA stated in its Notice that this information is "designed to ensure that less sophisticated customers understand the effects of partial funding so that they can make informed decisions when funding their account." The NFA also stated that the first *written confirmation* requirement applied to all existing accounts, but that the second *brief explanation* risk disclosure requirement would apply only to accounts opened on or after May 1, 2004. [See Pixley testimony at pages 143-145 of hearing transcript.] Nonetheless, even if Pixley was not required by NFA rule to provide the supplemental risk disclosure to Meyer because he had opened the account a couple of days before the effective date of the rule, Pixley had been on notice, for several months before he agreed to trade the Meyers' account at a 30% partially funded level, that the NFA considered the higher level of margin and leverage risk associated with partial funding to be a material fact that warranted supplemental disclosure, and that the NFA determined that explicit disclosure of that elevated risk to be integral to good business practice.

<sup>13</sup>Meyer testimony at pages 37-40 of hearing transcript; and e-mail from Meyer to Connor, dated April 22, 2004, 12:44 p.m. (exhibit 11, Amended Answer).

expected rates of return.”<sup>14</sup> After Meyer contacted IASG, Perry Jonkheer and John Connor would recommend that Meyer open an IASG account managed by Pixley and PCM. IASG introduced the Meyers’ account to Man Financial, Incorporated, a registered futures commission merchant headquartered in New York City.

Perry L. Jonkheer is the owner of IASG and is a registered principal and associated person with IASG. Jonkheer, along with John Connor, worked with Meyer over several months to select an advisor to trade a managed account to be funded with a deposit of \$50,000.<sup>15</sup> After Connor had helped Meyer select Pixley, Jonkheer spoke to Pixley twice before the Meyers opened the account, and on each day during the three-day trading life of the Meyers’ account. On the last day of trading, Jonkheer conducted a conference call with Meyer and Pixley to discuss the sudden trading losses and resulting margin call.<sup>16</sup> Meyer asserted that during one of the conversations Jonkheer surmised that Pixley may have made overly large and aggressive trades for the partially funded account, estimating that Pixley should have shorted 8, rather than 24, June unleaded gasoline futures.<sup>17</sup> Neither complainants nor respondents called Jonkheer to produce written or oral testimony.<sup>18</sup>

5. John Michael Connor, at the relevant time, was a registered associated person with Man Financial. After Meyer contacted IASG, Connor became the primary contact between

---

<sup>14</sup> IASG home page, dated June 12, 2004 (exhibit 15, respondents’ requests for admissions); *see* IASG Due Diligence Questionnaire (exhibit D, Richard Meyer’s affidavit.).

<sup>15</sup> *See* e-mail from Jonkheer to Meyer, dated September 9, 2003 (“I have searched for potential managers . . . that meet or exceed your minimum investment [and] risk/reward targets. . . . Unfortunately, there is not a lot to select in the way of good CTA’s with such small minimums.”) (Exhibit 20, respondents’ requests for admissions).

<sup>16</sup> *See* Pixley’s testimony at pages 106-109, of hearing transcript; ¶18 of Richard Meyer’s affidavit; ¶20 of Complaint; complainants’ pre-hearing memorandum, at page 9; Amended Answer, at ¶5 in §IV; Pixley’s phone logs for May 5, 11 and 17, 2004 (exhibit 2 to respondents’ discovery production dated March 29, 2007); Pixley’s responses to Richard Meyer Interrogatories 5, 6, 7, and 15; Pixley’s responses to Suzanne Meyer Interrogatory 17; and NFA records.

<sup>17</sup> Meyer’s testimony, at pages 54-58 of hearing transcript.

<sup>18</sup> At the hearing, Pixley’s counsel insisted that he had reserved the right to call Jonkheer as a witness, but did not explain why he had not identified Jonkheer as a witness before the hearing, or why he had not made Jonkheer available to testify on the scheduled date. *See* Pixley’s testimony at pages 145-146 of hearing transcript; and Orders dated March 9, and 19, 2007, setting deadlines for producing affidavits and identifying witnesses.

Meyer and Pixley. The precise nature of Connor's working relationship with IASG cannot be determined on the evidentiary record in this case. Nonetheless, after discussing the Meyers' investment objectives, Connor: provided Meyer a short list of commodity trading advisors, which included Pixley Capital Management; forwarded the PCM disclosure document, and other related documents, to the Meyers; handled the account-opening; told Meyer that Pixley would not trade the Meyers' account as aggressively as he traded his proprietary account; and told Pixley that the Meyers' investment would be partially funded at \$60,000.<sup>19</sup> Neither complainants nor respondents called Connor to produce written or oral testimony.

### *Written Disclosures*

6. On or about April 22, 2004,<sup>20</sup> Connor and Jönkheer would forward to the Meyers account-opening documents, including: the PCM disclosure Document;<sup>21</sup> the PCM Managed Account Agreement; a "Third Party Letter" Advisor's Letter; a CFTC rule 1.55 Risk Disclosure Statement; a Man Financial "Dear Client" Supplemental Risk Disclosure letter; and a Man Financial customer contract.<sup>22</sup> Connor also would forward a copy of a set of monthly account statements, from December 2002 to March 2004, for a proprietary account traded by Pixley.<sup>23</sup> These documents contained various clear warnings about the general risks associated with futures trading, including the pertinent risk that losses could be substantial and exceed funds on

---

<sup>19</sup> Meyer's testimony at pages 40-44 and 55-60, and Pixley's testimony at pages 107-110 and 136-137, of hearing transcript; Richard Meyer's affidavit, at ¶¶ 3-13, and 23; Pixley's responses to Richard Meyer Interrogatories 2, 5, 6, 7, and 15; Amended Answer, at ¶¶ 4, and 8-12, in §III; Complaint, at ¶¶ 9-14, and 23; and NFA records.

<sup>20</sup> See April 22, 2004 e-mail exchange between Connor and Meyer (exhibit 20, respondents' requests for admissions); and Meyer's testimony, at pages 60-62 of hearing transcript.

<sup>21</sup> Both sides have produced copies of the PCM disclosure document which was dated March 15, 2004. In addition, Meyer and Pixley have referred to a later version of the PCM disclosure document sent to Meyer, dated either April 7, or April 15, 2004. Neither side has produced a copy of an April version of the PCM disclosure document. However, respondents did not challenge Meyer's testimony that the April disclosure document stated that the "minimum investment" had been raised from \$100,000 to \$250,000.

<sup>22</sup> Exhibits 1-6 to Amended Answer; exhibits 1-6, and 17, to respondents' request for admissions; and exhibits A, C-F, and N to Richard Meyer's affidavit.

<sup>23</sup> Exhibit 7 to Amended Answer; exhibit 7, respondents' request for admissions; exhibit B, Richard Meyer's affidavit; and Pixley's replies to Suzanne Meyer interrogatories 8, 10 and 11.



deposit. However, whether viewed separately or collectively, these documents did not clearly disclose that Pixley's trading system was "aggressive," as he would describe it later at the hearing. These documents also did not clearly disclose that partially funding an account at a 30% level would increase "by several multiples" the margin and leverage risks associated with Pixley's trading system, including the risk that a sharp price movement would quickly wipe out the margin deposit.<sup>24</sup>

7. The 12-page PCM disclosure document contained a standard risk disclosure statement that prominently warned:

THE RISK OF LOSS IN TRADING COMMODITIES CAN BE SUBSTANTIAL. YOU SHOULD CAREFULLY CONSIDER WHETHER SUCH TRADING IS SUITABLE FOR YOU IN LIGHT OF YOUR FINANCIAL CONDITION<sup>25</sup>

The disclosure document further warned:

Trading is highly leveraged. The leverage in futures trading comes from the minimal amount of margin necessary to purchase a futures contract. A relatively small movement in the price of a contract can produce a loss that is equal to or substantially greater than the margin deposit.

The disclosure document also contained a discussion of various risk factors, including the fact that trading futures is speculative and volatile, and highly leveraged,<sup>26</sup> and featured the following warning:

It should be noted that [PCM] makes no expressed or implied assurance of profit or guaranty against loss in connection with its management of client accounts. Prospective clients are advised to review carefully this disclosure document, including the risk disclosure statement, . . . to consider the potential risk-reward factors, and to clarify any questions prior to opening an account.<sup>27</sup>

---

<sup>24</sup> See Pixley testimony at pages 121-122, 129-130, and 143-144, of hearing transcript; and amended answer, at ¶10 in §V.

<sup>25</sup> Capitalization in original, page ii of Disclosure Document.

<sup>26</sup> Pages 2-4 of Disclosure Document.

<sup>27</sup> Page 7 of Disclosure Document.

As noted previously, Pixley would rely on Connor and Jonkheer to handle “any questions” from prospective clients, including the Meyers.<sup>28</sup>

The five-page PCM Managed Account Agreement contained the following acknowledgment of risk:

Client is aware of the speculative nature in trading [commodity futures] which includes the risk that client may incur trading losses in excess of capital contributed to account. Client also acknowledges that no “safe” trading system has ever been devised, and that no one can guarantee profits or freedom from losses.<sup>29</sup>

The one-page Man Financial “Dear Client” Supplemental Risk Disclosure letter similarly warned:

You should only commit funds to trading [commodity futures] that represent “risk capital.” Risk capital refers to funds that you do not need to meet your current or long-term capital requirements. . . . Given the leverage involved, . . . losses can occur quite rapidly; potentially exceeding the funds that you have deposited in your account for margin or have earmarked as risk capital.

Finally, three tables in the disclosure document which portrayed several months of trading with no draw-downs were accompanied with an explanation that the results had not been audited, and a generic warning that: “PAST PERFORMANCE IS NOT NECESSARILY INDICATIVE OF FUTURE RESULTS.”<sup>30</sup>

8. Pixley’s “short-term contrarian” trading system was described in two documents: the PCM Disclosure Document and the IASG Due Diligence Questionnaire. As mentioned above, these documents did not state or explain that the Pixley’s trading system was “aggressive,” and did not explicitly address the specific risks associated with partially funding an account.

---

<sup>28</sup> Notwithstanding the fact that Pixley delegated to Connor and Jonkheer the responsibility to handle verbal communications with Meyer, Pixley asserted that Connor and Jonkheer were not his agents. *See* amended answer, at ¶¶8-12 in §II.

<sup>29</sup> ¶5 of Managed Account Agreement.

<sup>30</sup> Pages 9-12 of disclosure document, capitalization in original.

The disclosure document offered the following description of PCM's "general trading objectives":

The objective of [PCM's] trading methodology (the "Program") is to achieve consistent and reasonable capital appreciation of client's assets through speculative trading of commodity futures and options on futures.

The Program is technical in nature, developed from [PCM's] internally conducted research and analysis of historical and current patterns of price behavior. The Program may be further described as methodical, but not mechanical system, relying instead primarily on the judgment of [PCM] to determine which trades are deemed appropriate from a risk-reward and money management perspective. Trades may be held for a very brief time or for many weeks, depending upon [PCM's] assessment of the market conditions and the opportunities they present. . . .

[PCM] will engage primarily in outright trades, taking futures positions long or short, seeking to capitalize on directional moves.<sup>31</sup>

The due diligence questionnaire was a form with a series of questions by IASG and answers supplied by Pixley. Pixley defined his trading system as "short-term, systematic contrarian," and explained that it traded one position at a time, and focused on short-term trades in volatile markets. Asked to describe his approach, Pixley answered:

[I] developed a new technical indicator that measures current market volatility and compares this to the historical standard of that particular market. When the market reaches a "band," there is a buy or sell signal. The trade is closed out when the market regresses to the mean of volatility over the past 5-10 days.

Asked what excessive negative or positive return would "surprise" him, Pixley answered:

Upside does not surprise us. A monthly drawdown of 20% would surprise us. We are dealing with HISTORICAL volatility numbers. Market, we have tested, will move to the mean of a 5-10 day average.

Asked to estimate the maximum potential decline, Pixley answered:

Anyone who says anything less than 100% is lying. [One] must be prepared for events such as 9-11.

---

<sup>31</sup> Page 2 of disclosure document.

Asked to describe the four largest declines in the system's trading history, Pixley mentioned one: a 30 percent loss on September 11, 2001.

Pixley missed an opportunity to portray his trading system as "aggressive," by answering "3," when asked, "On a scale of 1 to 5 (1 being the low risk peer investor, and 5 being a risky manager/investor in your area) where do you place yourself?" When asked if he ever exercised "judgmental decision making," Pixley answered: "Yes. [I use] discretion only when it involves position size. . . . Sometimes, position sizes need to be altered to keep risk in the accounts under better control."

9. The PCM disclosure document, dated March 15, 2004, stated on the cover page that Pixley required a "\$100,000 minimum investment," *i.e.*, minimum deposit of actual funds. However, it also stated, on page 7, that the minimum \$100,000 investment amount that could be waived by PCM:

The minimum initial amount requires a deposit of \$100,000. [PCM] may, in its discretion, waive or change this minimum investment requirement for any one client and without notice to other clients.

As previously noted, Meyer testified that the succeeding PCM disclosure document, dated April 7 or 15, 2004, raised the minimum investment to \$250,000. Similarly, the IASG Due Diligence Questionnaire, dated April 14, 2004, and the IASG website, stated that the "minimum account" was \$250,000. This increase appears to have been a factor in Meyer's decision to increase the amount he was willing to risk from \$50,000 to \$60,000.<sup>32</sup>

Pixley testified that he normally traded client accounts in "\$100,000 increments," and that he normally permitted clients to "half-fund" accounts. In this connection, he testified that he would have been willing and able to trade the Meyers' account, with \$60,000 in actual

---

<sup>32</sup> See April 22, 2004 e-mail exchange between Connor and Meyer (exhibit 20, respondents' requests for admissions); and Meyer's testimony, at pages 42-43, 46-49, 60-68, and 72-75, of hearing transcript.

funds, at a nominal trading level of \$125,000. However, when Pixley learned from Jonkheer that Meyer intended to limit his actual fund deposit to \$60,000, for a \$200,000 nominal account,<sup>33</sup> Pixley would not advise Meyer that he was willing to reduce the nominal account size to better control risk.<sup>34</sup>

10. The PCM disclosure document featured three tables portraying a successful performance history for Pixley's trading program. Table A, for a single account that was more than \$500,000, showed monthly rates of return for six months, ranging from 2.2% to 7.4%, and averaging about 5.2% per month. Table B, for five accounts with less than \$500,000, showed monthly rates of return for six months, ranging from 2.48% to 10.77%, and averaging about 7.6% per month. Table C, for a proprietary account, showed monthly rates of return for thirteen months (January 2003 through January 2004), ranging from 3.03% to 26.19%, and averaging about 12.6% per month.

11. Pixley also asked Jonkheer and Connor to deliver to Meyer a set of monthly account statements, from December 2002 to March 2004, for a proprietary account. Pixley forwarded these documents without any accompanying written explanation or interpretation. In the absence of any explanation, Meyer treated these account statements as no more than confirmation of the information in Table C of the PCM disclosure document. These account statements showed that, as of December 1, 2002, trading in futures had realized a cumulative loss for the year of \$68,000, but that for the next sixteen consecutive months, trading in futures realized profits: over \$198,000 in 2003, and over \$78,000 for the first quarter in 2004. During the time that the

---

<sup>33</sup> Pixley's replies to Richard Meyer interrogatories 26 and 27; Pixley's reply to Suzanne Meyer interrogatory 14; and Pixley's testimony, at pages 101-107, 109, 127-130, and 145-146, of hearing transcript.

<sup>34</sup> See Pixley's testimony at pages 101-107, 128-130, 145-146, and 148-150, of hearing transcript. Similarly, an e-mail that Jonkheer sent to Pixley a couple of months after the disputed trades indicates that Jonkheer did not convey this information to Meyer. In that e-mail, Jonkheer advised Pixley that he intended to fight an anticipated lawsuit, and laid out a factual description of his dealings with Meyer. Jonkheer described in detail his discussions with Meyers, including Meyer's insistence that he commit no more than \$60,000 in actual funds, but made no reference to any discussions about reducing the nominal size of the account.

account had a cash balance under \$125,000, the largest drawdown on an individual trade was for about \$4,500. During the time that the account had a cash balance over \$200,000, the largest drawdown on an individual trade was for about \$57,000 in early January 2004, which was subsequently recouped by two profitable trades that realized about \$75,000 in profits.<sup>35</sup> In this connection, Meyer asserted that Connor had told him that he should not expect such large profits or losses, because Pixley traded client accounts less aggressively than his own proprietary account.<sup>36</sup>

#### *Opening, Trading and Closing the Account*

12. By mid April 2004, Meyer decided to select Pixley to manage an account pursuant to the PCM *Short-Term Contrarian <\$500,000* program. Connor and Jonkheer e-mailed the various documents listed above in finding 6. On April 21<sup>st</sup> the Meyers signed the Man customer contract and the PCM managed account agreement. On April 27<sup>th</sup> the Meyers signed the third party advisor's agreement. On April 29<sup>th</sup> the Meyers funded the account with a deposit of \$60,000. On or about May 1<sup>st</sup> Jonkheer advised Pixley that the Meyers would be depositing no more than \$60,000. As a result the account would be partially funded at 30% of the nominal trading level.<sup>37</sup>

13. On May 3<sup>rd</sup> Pixley shorted 12 June unleaded gasoline futures, eight contracts at 124.00, and four contracts at 125.00.<sup>38</sup> The June contract closed at 126.20, and the twelve-contract position had a negative liquidation value of \$8,568.

---

<sup>35</sup> The January statement did not show any deposits, which would have indicated a margin call in connection with the large trading loss in early January.

<sup>36</sup> Richard Meyer's affidavit, at ¶¶ 4-8; and Meyer's testimony, at pages 24-28 of hearing transcript.

<sup>37</sup> Pixley's testimony at pages 104-105, 107-109, 127-131, 145-146, of hearing transcript; Pixley's replies to Richard Meyer interrogatories 4-6; and amended answer, at ¶8 in §II, ¶16 in §III, ¶¶5, 6, 12 and 23 in §IV, ¶10 in §V.

<sup>38</sup> The initial margin requirement was \$2,500 per contract, and the maintenance margin requirement was \$3,375 per contract.

On May 4<sup>th</sup> Pixley shorted 12 additional June unleaded gasoline futures, four contracts at 126.50, four at 127.50, and four at 128.50. The June contract closed at 130.38, the twenty-four contract position had a negative liquidation value of \$46,166, and the Meyers faced a \$67,000 margin call.

On the morning of May 5<sup>th</sup> Jonkheer advised Meyer about the margin call, and Meyer stated that he did not intend to commit additional funds. Soon afterwards, Pixley bought back the twenty four contracts, at 131.60, for a loss of \$56,820.<sup>39</sup>

### *California Litigation*

14. Before filing the reparations complaint, the Meyers brought suit against Pixley, PCM, Jonkheer, IASG, and Connor, in Superior Court of the State of California, alleging various state law violations arising from the same set of facts that form the basis of the reparations complaint. After Jonkheer, IASG, and Connor agreed to settle their portion of the dispute by paying a total of \$30,000, the Meyers filed a request to dismiss the complaint without prejudice. The Meyers do not dispute respondents' assertion that the Superior Court subsequently determined that Pixley and PCM were the "prevailing parties" and as such entitled to their "statutory costs."<sup>40</sup> Respondents have not produced a copy of any order from the Superior Court, and have not asserted that the Superior Court conducted an evidentiary hearing before dismissing the case.<sup>41</sup>

---

<sup>39</sup> See amended answer, at ¶¶14-18 in §IV; and Pixley's phone log (exhibit 1, respondents' further responses to requests for production).

<sup>40</sup> See California complaint (exhibit to reparations complaint); amended answer, at ¶¶ 5-8 in §II, and ¶¶ 12-13 in §V; and Richard Meyer testimony, at pages 35-36 of hearing transcript.

<sup>41</sup> Respondents assert that the dismissal of the state action is evidence that complainants have brought the reparations complaint in bad faith. In this connection, respondents have raised numerous affirmative defenses, but have not raised the affirmative defense of res judicata or collateral estoppel. See amended answer, at ¶¶ 8-26 in §V.

## Discussion and Conclusions

The Meyers have established by a preponderance of the evidence that Randy Pixley and Pixley Capital Management failed to disclose that partially funding a \$200,000 nominal account with \$60,000 in actual funds increased by several multiples the margin and leverage related risks associated with his trading system, and failed to disclose that the Meyers could have significantly reduced that risk by halving the nominal account size, in violation of Section 4o(1) of the Commodity Exchange Act and CFTC rule 4.34(o). Section 4o(1) of the Commodity Exchange Act provides:

It shall be unlawful for a commodity trading advisor, [or an] associated person of a commodity trading advisor, . . . by use of the mails or any other means or instrumentality of interstate commerce, directly or indirectly – (A) to employ any device, scheme, or artifice to defraud any client or participant; or (B) to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

CFTC rule 4.34(o) provides:

Nothing set forth in [CFTC rules governing specific disclosure requirements] shall relieve a commodity trading advisor from any obligation under the Act or regulations thereunder, including the obligation to disclose all material information to existing or prospective clients even if the information is not specifically required by such [rules].

The exponentially greater margin and leverage risk associated with a managed account that is partially funded at 30% of its nominal account size is patently material to any reasonable prospective client of a commodity trading advisor. This fact would be material whether or not the NFA had enacted a rule requiring a commodity trading advisor to specifically disclose the elevated risks. Nonetheless, the NFA's determination to mandate this supplemental disclosure underscores the materiality of the exponentially elevated risks associated with partially funded




accounts. Thus, once Jonkheer informed Pixley that Meyer was planning to partially fund a \$200,000 nominal account with a deposit of just \$60,000, Pixley became obligated to supplement his regular disclosures by directly and explicitly disclosing to Meyer the elevated risks associated with partial funding, before he placed the first trade. Pixley could have made this direct disclosure via a brief phone call or e-mail exchange, during which he also could have informed Meyer that he could reduce the risks by decreasing the nominal trading level, or that he could avoid the risks altogether by deciding that Pixley's system was not suitable in light of the Meyers' trading objectives and risk tolerance. However, Pixley recklessly chose to deprive Meyer of this material information. As a result, Pixley precluded Meyer from making an adequately informed decision, and promptly exposed the Meyers' account to the undisclosed risks that led to its rapid demise.

Pixley has not produced any compelling evidence that rebuts Meyer's presumed reliance on his omissions. In these circumstances, the proper measure of damages is to return the Meyers to their status before Pixley's fraudulent non-disclosure, and thus award them their out-of-pocket losses: \$26,820.

### **ORDER**

Randy Blair Pixley and Pixley Capital Management LLC violated Section 4o(1) of the Commodity Exchange Act, and CFTC rule 4.34(o). These violations proximately caused \$26,820 in damages. Accordingly, Randy Blair Pixley and Pixley Capital Management LLC are ordered to pay to Richard Meyer and Suzanne Meyer reparations of \$26,820, plus interest on that amount at 4.05%, compounded annually from April 29, 2004, to the date of payment, plus \$125 in costs for the filing fee. Liability is joint and several.

Dated October 4, 2007.

  
Philip V. McGuire,  
Judgment Officer