

RECEIVED  
C.F.T.C.

FEB 11 A 9:58

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

CLERK OF COMMISSIONS  
AND FINANCIAL CLERK

---

In the Matter of:	:	CFTC Docket No. 99-4
	:	
	:	<b>ORDER MAKING FINDINGS</b>
STEVEN G. SOULE,	:	<b>AND IMPOSING REMEDIAL</b>
	:	<b>SANCTIONS AS TO STEVEN</b>
	:	<b>G. SOULE</b>
<b>Respondent.</b>	:	

---

I.

On February 4, 1999, the Commodity Futures Trading Commission ("Commission") filed a Complaint and Notice of Hearing ("Complaint") against Steven G. Soule and others.<sup>1</sup> The Complaint charged, *inter alia*, Respondent Steven G. Soule ("Soule") with violating or having violated Sections 4b(a)(i)-(iii) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 6b(a)(i)-(iii) (1999). In January 2001, the the Administrative Law Judge dismissed one count of the Amended Complaint and granted partial summary disposition against all Respondents on all remaining issues of liability in the Amended Complaint.

II.

In order to dispose of the remaining allegations and issues raised in the Amended Complaint as to himself, Respondent Soule has submitted an offer of settlement that the Commission has decided to accept. Without admitting or denying the allegations in the Amended Complaint or the findings of fact in this Order Making Findings and Imposing Remedial Sanctions ("Order"), Respondent Soule acknowledges service of this Order, and consents, solely on the basis of his offer, to the use of the findings herein in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.<sup>2</sup>

---

<sup>1</sup> The original complaint was filed December 22, 1998, but was later amended to include a new respondent.

<sup>2</sup> Provided, however, Soule does not consent to the use of this Order or this Offer as the sole basis for any other proceeding brought by the Commission other than a proceeding to enforce the terms of this Offer or the Order, or the findings in the Order consented to in this Offer.

### III.

The Commission finds the following:

#### A. SUMMARY

Between at least November 1993 and November 1994, Soule and others engaged in a scheme to fraudulently allocate trades belonging to Coastal Corporation ("Coastal") to themselves for profit. Soule, a futures trader at Coastal, used his position to identify certain profitable trades made on behalf of Coastal. Soule then coordinated with a telephone clerk of Refined Energy Executions, Inc. ("Refined"), a floor operation at the New York Mercantile Exchange ("NYMEX"), to allocate the profitable trades belonging to Coastal to accounts belonging to other respondents.

The profits from these allocated trades were later distributed among the scheme's participants, including Soule. Soule and the other participants allocated Coastal trades on at least fourteen different days within the time period, and generated illegal profits for themselves of at least \$276,557.

#### B. SETTLING RESPONDENT

**Steven G. Soule** currently resides in Houston, Texas. Soule worked for Coastal in its futures trading division from September 1990 through December 1994 as a Manager of Futures Trading. Soule's responsibilities included placing orders for Coastal's energy futures trading to the floor of the NYMEX. Soule has never been registered with the Commission in any capacity.

#### C. FACTS

Coastal's business, directly and through its various subsidiaries and divisions, included petroleum refining, marketing and distribution, natural gas transmission and storage, and oil and gas exploration and production. Coastal traded in the futures markets primarily to hedge the value of its positions in raw materials and refined products.

Immediately before the relevant period, Soule worked for Refined, a floor brokerage operation at the NYMEX. When Soule left Refined, he went directly to Coastal, where he remained throughout the relevant period. During the relevant period, Soule worked in Coastal's trading room in its Houston office and was one of two persons responsible for placing orders with Refined on the floor of the NYMEX for Coastal's trading activity. Soule contacted a particular Refined telephone clerk virtually daily to place orders on behalf of Coastal in crude oil, heating oil and unleaded gasoline futures contracts.

During the relevant period, Soule and the Refined floor clerk misappropriated numerous Coastal futures transactions, including outright trades and

intracommodity spreads, but also portions of intercommodity crack spreads, *i.e.*, the coordinated purchase and sale of crude oil futures against the sale or purchase of heating oil and unleaded gasoline futures. Soule and the Refined telephone clerk then wrongfully allocated the misappropriated trades to brokerage accounts controlled by other scheme participants.

In general, the scheme worked like this: Soule placed orders for Coastal to buy or sell futures contracts or spreads in crude oil, heating oil, and unleaded gasoline on the NYMEX by contacting the Refined telephone clerk at its crude oil booth. The Refined telephone clerk then prepared the written order tickets and relayed the orders to the floor ring to be executed. After the executed orders were returned to the Refined telephone clerk, he contacted Soule to confirm the fills.

Soule then watched the market closely to identify opportunities to obtain a profitable offset of some or all of Coastal's open position. When such an opportunity arose, Soule instructed the Refined telephone clerk to offset all or a portion of Coastal's initial transaction, and designate the offsetting trade as belonging to other scheme participants rather than Coastal. To further the allocation, the Soule caused Coastal's original order ticket to be changed to assign part or all of the trade to a scheme participant. To complete the misappropriation, Soule then directed the Refined telephone clerk to place another order for Coastal to replace the contracts previously misallocated. Because the market had moved since the original Coastal trade, the price at which this later trade was filled was almost always worse than the original price for the trade, thus costing Coastal money.

Soule often altered entries on his in-house Coastal paperwork, known as "Merc scorecards," to reflect the trades as he ultimately misappropriated them. Coastal entered data from the Merc scorecards into its computerized system as part of its recordkeeping. At the end of a day on which its trades were wrongfully allocated, Coastal had the same number of round turn trades it expected to achieve at the beginning of the day, but at worse prices, because of Soule and the Refined telephone clerk's allocations. The profitable misappropriated trades were placed in accounts controlled by other scheme participants.

All respondents benefited financially from the wrongful allocation of Coastal's trades. Some of the scheme participants made payments to various financial institution accounts controlled by Soule, Soule's father, and others. On several occasions, the scheme participants paid Soule's American Express bill in cash, and on other occasions, a check was submitted to American Express as payment for Soule's bills.

During the relevant time period, Respondent Soule and others fraudulently allocated trades belonging to Coastal into accounts controlled by other scheme participants on at least the following days: November 11, 1993; November 12, 1993; December 14, 1993; December 27, 1993; January 19, 1994; February 9, 1994; February 10, 1994; February 14, 1994; February 15, 1994; February 16, 1994; February 17, 1994;

October 11, 1994; and November 4, 1994. As a result these fraudulent allocations, Soule and the other scheme participants obtained \$276,557.

#### **D. LEGAL DISCUSSION**

##### **1. Soule Fraudulently Allocated Commodity Futures Trades Belonging To Coastal**

Sections 4b(a)(i)-(iii) of the Act<sup>3</sup> prohibit any person from cheating, defrauding, willfully deceiving or making false reports to, or attempting to cheat, defraud, or willfully deceive or make false reports to, other persons in, or in connection with, the purchase and sale of commodity futures contracts.

Soule fraudulently allocated profitable trades belonging to Coastal to accounts controlled by other scheme participants and made replacement trades at worse prices to cover up his allocations. Section 4b(a) prohibits the fraudulent allocation of winning and losing trades. *In re Lincolnwood Commodities, Inc.*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,986 at 28,246 (CFTC Jan. 31, 1984) (respondents allocated winning day trades to their account and losing day trades to customers' accounts); *In re GNP Commodities, Inc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,206 (CFTC Aug. 11, 1992) (allocating winning trades to respondents' accounts and losing trades to customer's account violates Section 4b); *In re Nikkhah*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,129 at 48,879 (CFTC May 12, 2000) (allocating trades to the benefit of one customer and to the detriment of another violates Section 4b). These kinds of allocations violate Section 4b(a) because arbitrarily allocating winning trades to one account and losing trades to another account is unfair and deprives the customer of a fair opportunity for profitable trades. *In re Nikkhah*, ¶ 28,129 at 49,885.

Soule also made misrepresentations and omissions to Coastal through false internal trading reports. To find that Soule cheated, defrauded or willfully deceived Coastal, a court must find that he misrepresented or omitted to state a material fact. *See Saxe v. E.F. Hutton & Co.*, 789 F.2d 105, 110-11 (2d Cir. 1986); *Hammond v. Smith Barney Harris Upham & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,657-59 (CFTC Mar. 1, 1990). A statement is material if it is substantially likely that a reasonable investor would consider the matter important in making an investment decision. *In re R&W Technical Services, Ltd.*, [1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,582 at 47,744 (CFTC March 16, 1999), *aff'd in relevant part* 205 F.3d 165 (5<sup>th</sup> Cir. 2000). In general, all manner of misrepresentations of material fact regarding futures transactions violate the antifraud provisions of the Act. *See, e.g., id.*

---

<sup>3</sup> This Order refers in all cases to the provisions of the Act as originally charged. Sections 4b(a)(i)-(iii) are now Sections 4b(a)(2)(i)-(iii).

A Section 4b violation also requires that the wrongdoer act with scienter. *See Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988). A finding of scienter can be supported by proof of recklessness and by inferences from circumstantial evidence. *CFTC v. Savage*, 611 F.2d 270, 283 (9<sup>th</sup> Cir. 1979); *In re JCC, Inc.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26.080 at 41,579 (CFTC May 12, 1994), *aff'd sub nom. JCC, Inc. v. CFTC*, 63 F.3d 1557 (11<sup>th</sup> Cir. 1995).

Soule's trade allocations were fraudulent because they deprived Coastal of its fair opportunity to win profitable trades, while guaranteeing risk-free profitable trades for the scheme participants. His false internal reports about the trades he had misallocated deceived Coastal. Therefore, Soule violated Sections 4b(a)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(i)-(iii).

#### IV.

#### OFFER OF SETTLEMENT

Soule has submitted an Offer of Settlement in which he neither admits nor denies the allegations in the Amended Complaint or the findings in the Order. Subject to the foregoing, Respondent Soule acknowledges service of this Order and admits the jurisdiction of the Commission with respect to the matters set forth in the Amended Complaint and the Order. He waives: (1) a hearing and all post-hearing procedures; (2) judicial review by any court; (3) any objection to the staff's participation in the Commission's consideration of the Offer; (4) all claims which he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and Part 148 of the Regulations, 17 C.F.R. §§ 148.1, *et seq.*, relating to or arising from this proceeding or Order; and (5) any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief.

Respondent Soule stipulates that the record basis on which this Order is entered consists of the Amended Complaint, and the Order and findings to which he has consented in his Offer. Respondent Soule consents to the Commission's issuance of this Order, which makes findings as set forth herein and orders:

that Respondent Soule:

- a) cease and desist from violating the provisions of the Act and the Regulations that he has been found to have violated;
- b) pay restitution in the amount of \$276,557 plus post-judgment interest at the federal judgment rate pursuant to a ten-year payment plan ("payment plan");
- c) pay a contingent civil monetary penalty ("CMP") of up to \$276,000 pursuant to a payment plan;

- d) be permanently prohibited from trading on or subject to the rules of any contract market; and
- e) comply with the undertakings as set forth in the Joint Offer and incorporated in this Order.

**V.**

**FINDINGS OF VIOLATIONS**

Solely on the basis of the consents evidenced in Soule's Offer and prior to any further proceedings, the Commission finds that Soule violated Sections 4b(a)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(i)-(iii) (1999).

**VI.**

**ORDER**

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Soule shall cease and desist from violating Sections 4b(a)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(i)-(iii) (1999);
- B. Soule is permanently prohibited from trading for himself or others on or subject to the rules of any registered entity and directs all registered entities to refuse Soule privileges, beginning on the third Monday after the date of the Order;

Nothing in this Order shall prohibit Soule from trading, or giving advice on trading, the proprietary commodity futures or options account(s) of any present or future employer, provided that Soule (a) provides his employer with a copy of this Order prior to trading or giving advice on trading such account(s), and (b) informs the Division of Enforcement within 30 days after commencing such work for an employer that involves trading or giving advice on trading any such account(s) by sending a letter addressed to: Director, CFTC, Division of Enforcement, 1155 21<sup>st</sup> Street, NW, Washington, DC 20581 that states the name of Soule's employer, its address and telephone number, and the title and duties of Soule's position. For purposes of this provision, the term "employer" shall mean only corporate entities or partnerships with total assets of at least \$2,000,000. The reporting requirements of this paragraph shall cease on January 1, 2015.

- C. Soule shall pay restitution of \$276,557 plus post-judgment interest at the federal judgment rate, as set forth in 28 U.S.C. § 1961(a), (the "Restitution

Amount”), as compensation directly to Coastal or its successor, pursuant to a payment plan, as provided below. Under the plan, Soule shall make an annual restitution payment (“Annual Restitution Payment”) as directed by a monitor designated by the Commission (the “Monitor”) on or before July 31 of each calendar year, starting in calendar year 2005 and continuing for ten years (or until the Restitution Amount is paid in full, if that occurs first).<sup>4</sup> Soule shall make each such Annual Restitution Payment by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order, made payable to the Monitor<sup>5</sup> and sent to Daniel Driscoll or his successor, Executive Vice President, National Futures Association, 200 West Madison Street, Chicago, IL 60606, under cover of letter that identifies Soule and the name and docket number of this proceeding;

The Commission notes that in the related criminal action, *United States v. Robert C. Rossi, et al.*, Criminal Action No. H-99-40 (S.D. Tex.), Soule has been ordered to pay, jointly and severally with the other defendants therein, the same amount of restitution that he has been ordered to pay in this proceeding. The Commission shall credit Soule, dollar for dollar, any restitution that he or the other defendants in *U.S. v. Rossi, et al.* pay Coastal, provided that Soule submits proof of such restitution payment(s) to the Division of Enforcement, including any determination by any relevant court of the amount of the restitution paid; Soule shall transmit a copy of the cover and form of payment, and proof of any restitution payment(s), to the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581;

- D. Soule shall pay a contingent civil monetary penalty in the amount of up to \$276,000 (“CMP Amount”), pursuant to a payment plan described below. Pursuant to the plan, Soule shall make an annual civil monetary penalty

---

<sup>4</sup> If the Monitor determines that an Annual Restitution Payment is due, then the Monitor will increase the amount of the remaining restitution payment by post-judgment interest calculated to the date of the payment based on the total remaining restitution obligation, pursuant to 28 U.S.C. § 1961. The Monitor shall then disburse any payment by Soule to Coastal Corp., or its successor, in the appropriate amount. Based upon the amount of funds available, the Monitor may decide to defer distribution. If, at the end of the ten-year period, any amount of the Annual Restitution Payments has not been distributed, that amount shall instead be paid and applied as a payment to the civil monetary penalty obligation, as provided below.

<sup>5</sup> Soule agrees that the National Futures Association is hereby designated as the Monitor for a period of ten years commencing from January 1, 2005. Notice to the Monitor shall be made to Daniel Driscoll or his successor, Executive Vice President, National futures Association, 200 West Madison Street, Chicago, IL 60606. For ten years, based on Soule’s sworn financial statements, tax returns, and other financial information and records provided to the Monitor, the Monitor shall calculate the total amount of the Annual Restitution Payment and/or Annual CMP Payment to be paid by Soule for the year. On or before June 30 of each year and starting in calendar year 2005, the Monitor shall also send written notice to Soule with instructions to pay by no later than July 31 of that year the amount of the restitution and/or civil monetary penalty pursuant to the payment instructions provided above.

payment ("Annual CMP Payment") following Soule's discharge of his restitution obligation, on or before July 31 of each calendar year and continuing until December 31, 2015, (or until the CMP Amount is paid in full, if that occurs first).<sup>6</sup> Soule shall make each such Annual CMP Payment by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Commodity Futures Trading Commission, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581, under cover of letter that identifies Soule and the name and docket number of this proceeding. Soule shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21<sup>st</sup> Street, NW, Washington, DC 20581;

The amount of Soule's Annual Payment shall consist of a portion of: (1) the adjusted gross income (as defined by the Internal Revenue Code) earned or received by Soule during the course of the preceding calendar year; plus (2) all other net cash receipts, net cash entitlements, or net proceeds of non-cash assets received by him during the course of the preceding calendar year. The Annual Payment will be determined as follows:

<b>Where Adjusted Gross Income Plus Net Cash Receipts Total:</b>	<b>Percent of Total to be Paid by Soule is:</b>
Up to \$25,000	0%
\$25,001-\$50,000	20% of the amount above \$25,000
\$50,001-\$100,000	\$5,000 (this represents 20% of the amount between \$25,000 and \$50,000) plus 30% of the amount above \$50,000
Above \$100,000	\$20,000 (this represents 20% of the amount between \$25,000 and \$50,000, plus 30% of the amount between \$50,000 and \$100,000) plus 40% of the amount above \$100,000.

F. In the event that Soule does not make payments as directed above, the Commission may bring a proceeding or an action to enforce compliance

<sup>6</sup> Should the amount due under the payment plan for any Annual Restitution Payment be greater than the balance due on Soule's Restitution Obligation, the amount due under the payment plan not paid as restitution will constitute Soule's first Annual CMP Payment.



with this Order and at its option may seek payment of restitution or the civil monetary penalty required above. The only issues Soule may raise in defense of such enforcement action is whether they have made the Annual Restitution and/or Annual CMP Payments in accordance with the terms of the Order. Any action or proceeding brought by the Commission compelling payment of the Annual Restitution and/or Annual CMP Payments, due and owing as set forth above, or any portion thereof, or any acceptance by the Commission of partial payment of the Annual Restitution and/or CMP Payments made by Soule, shall not be deemed a waiver of Soule's obligations to make further payments pursuant to a payment plan, or a waiver of the Commission's right to seek to compel payments of the remaining balance of the restitution or the civil monetary penalty assessed against him;

- G. The Commission notes that an order requiring immediate payment of a civil monetary penalty and restitution against Soule would be appropriate in this case, but does not impose it based upon Soule's financial condition. Soule acknowledges that the Commission's acceptance of the Offer is conditioned upon the accuracy and completeness of the sworn Financial Statements and other evidence he has provided regarding his financial condition. Soule consents that if at any time following the entry of this Order, the Division obtains information indicating that his representations concerning his financial condition were fraudulent, misleading, inaccurate, or incomplete in any material respect at the time they were made, the Division may, at any time following the entry of the Order, petition the Commission to: (1) reopen this matter to consider whether Soule provided accurate and complete financial information at the time such representations were made; (2) require immediate payment of the full amount of the restitution award and immediate payment of the full amount of the civil monetary penalty, required by paragraphs D and E, *supra*; and (3) seek any additional remedies that the Commission would be authorized to impose in this proceeding if Soule's Offer had not been accepted. No other issues shall be considered in connection with this petition other than whether the financial information provided by Soule was fraudulent, misleading, inaccurate, or incomplete in any material respect, and whether any additional remedies should be imposed. Soule may not, by way of defense to any such petition, contest the validity of, or the findings in, the Order, assert that payment of a civil monetary penalty or restitution should not be ordered, or contest the amount of the civil monetary penalty or restitution to be paid. If in such proceeding, the Division petitions for, and the Commission orders, payment of less than the full amount of the restitution award or the full amount of the civil monetary penalty, such petition shall not be deemed a waiver of Soule's obligations to pay the remaining balance of the restitution or civil monetary penalty assessed against Soule pursuant to the payment plans; and

H. Soule shall comply with his undertakings as set forth in Section III of the Offer, as follows:

1. Soule shall never apply for registration or seek exemption from registration with the Commission in any capacity, except as provided for in Section 4.14(a)(9) of the Regulations, 17 C.F.R. § 4.14(a)(9) (2001), and shall never engage in any activity requiring registration or exemption from registration, except as provided for in Section 4.14(a)(9) of the Regulations, or act as a principal, agent or officer of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Section 4.14(a)(9) of the Regulations;
2. Neither Soule nor any of his agents or employees shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in the Order, or the allegations in the Complaint, or creating, or tending to create, the impression that the Order, or the allegations in the Complaint, are without a factual basis; provided, however, that nothing in this provision affects Soule's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Soule shall take all steps necessary to ensure that their agents or employees, if any, understand and comply with this undertaking;
3. Soule shall provide the Monitor with his sworn financial statement on June 30 and December 31 of each calendar year, starting June 30, 2005 and continuing through and including December 31, 2014. The Financial Statement shall provide:
  - (a) a true and complete itemization of all Soule rights, title and interest in (or claimed in) any asset, wherever, however and by whomever held;
  - (b) an itemization, description and explanation of all transfers of assets with a value of \$1,000 or more made by or on behalf of Soule over the preceding six-month interval; and
  - (c) a detailed description of the source and amount of all of Soule's income or earnings over the preceding six-month interval, however generated;
4. Soule shall also provide the Monitor with complete copies of their signed federal income tax returns (for the previous calendar year), including all schedules and attachments thereto (e.g., IRS Forms W-2) and Forms 1099, as well as any filings they are required to

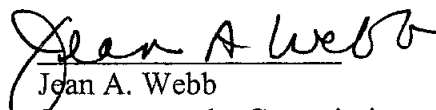
submit to any state tax or revenue authority, on or before June 30 of each calendar year, or as soon thereafter as the same are filed, beginning in 2005 and ending in 2015. If Soule moves his place of residence or business at any time, he shall provide written notice of their new addresses to the Monitor and the Commission within ten (10) days thereof. If, during the same time period, Soule elects to file a joint tax return, he shall provide all documents called for by this paragraph, including the signed and filed joint tax return, plus a draft individual tax return prepared on IRS Form 1040 containing a certification by a licensed certified public accountant that the "Income" section truly, accurately, and completely identifies all deductions that he has a right to claim on the joint tax return; provided, however, that Soule may claim 100% of the deductions contained in the "Adjusted Gross Income" section that are solely his. Such individual tax return shall include all schedules and attachments thereto (e.g., IRS Forms W-2) and Forms 1099, as well as any filings required to be submitted to any state tax or revenue authority;

5. Soule shall cooperate fully and expeditiously with the Monitor and the Commission in carrying out all aspects of the Annual Payments. He shall cooperate fully with the Monitor and the Commission in explaining their financial income and earnings, status of assets, financial statements, asset transfers, tax returns, and shall provide any information concerning themselves as may be required by the Commission. Furthermore, Soule shall provide additional information and documents with respect thereto as may be requested by the Monitor and the Commission; and
6. Soule shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any member of Soule's family or any other person or entity for the purpose of concealing such funds or property from the Monitor or the Commission.

The provisions of this Order shall be effective on this date.

BY THE COMMISSION.

Dated: February 11, 2004

  
Jean A. Webb

Secretary to the Commission  
Commodity Futures Trading Commission