

IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 06-80362-CIV- HURLEY

COMMODITY FUTURES TRADING
COMMISSION, and NEW HAMPSHIRE
DEPARTMENT OF STATE,
BUREAU OF SECURITIES REGULATION,

Plaintiffs,

v.

CROMWELL FINANCIAL SERVICES, INC.,
PHILLIP TUCCELLI, MICHAEL STARYK,
DENNIS GEE, RICHARD PELUCHETTE,
and RICHARD ASTERN,

Defendants.

**CONSENT ORDER OF PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF AS TO DEFENDANTS CROMWELL
FINANCIAL SERVICES, INC., PHILIP TUCCELLI, DENNIS GEE, RICHARD
PELUCHETTE, MICHAEL STARYK III AND RICHARD ASTERN**

I.

INTRODUCTION

On June 12, 2005, Plaintiff, Commodity Futures Trading Commission (“Commission”), filed its Complaint in this civil action against Cromwell Financial Services, Inc. (“Cromwell”), Phillip Tuccelli (Tuccelli), Dennis Gee (“Gee”), Richard Peluchette (“Peluchette”), Michael Staryk III (“Staryk”), and Richard Astern (“Astern”), and others for alleged violations of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. § 1 *et seq.* (2002), and Regulations promulgated thereunder (“Commission Regulations”), 17 C.F.R § 1.1 *et seq.* (2004), during the period from January 1, 2002 to

January 1, 2004 (the “relevant period”). This Complaint seeks a permanent injunction, the disgorgement of ill-gotten gains, repayment to injured customers, and an award of civil monetary penalties.

II.

CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint without any further judicial proceedings, Defendants Cromwell, Tuccelli, Gee, Peluchette, Staryk, and Astern (hereinafter “Defendants” or specifically named) each:

1. Consent to the entry of this “Consent Order of Permanent Injunction, and Other Equitable Relief As To Defendants Cromwell Financial Services, Inc., Philip Tuccelli, Dennis Gee, Richard Peluchette, Michael Staryk III and Richard Astern” (hereinafter “Order”):

2. Affirm that each Defendant has read and agrees to this Order voluntarily and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein.

3. Admit that this Court has jurisdiction over each of them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).

4. Admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).

5. Waive:

(a) All claims that may be available under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 and 28 U.S.C. § 2412, to seek costs, fees and other expenses relating to, or arising from, this action;

(b) 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 relief; and

(c) All rights of appeal in this action.

6. Consent to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order and for any other purposes relevant to this action.

7. Agree that neither Defendants nor any of their agents, servants, employees, contractors or attorneys shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or contained in this Order or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect Defendants' (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. Defendants shall take all necessary steps to ensure that all of their agents, servants, employees, contractors and attorneys understand and comply with this agreement;

8. By consenting to the entry of this Order, Defendants neither admit nor deny the allegations of the Complaint or the Findings of Fact and Conclusions of Law contained in this Order, except as to jurisdiction and venue, which Defendants admit; However, Defendants agree and intend that the allegations of the Complaint and all of the Findings of Fact made by this Court and contained in Part III of this Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of any subsequent bankruptcy proceeding filed by, on behalf of, or against any of the

Defendants, or any proceeding to enforce this Order, or any other proceeding relating to the fitness of the Defendants to act in various capacities governed by the Act. Each of the Defendants shall provide immediate notice of any bankruptcy filed by, on behalf of, or against them in the manner required by Part VI, paragraph 59 of this Order. No provision of this Order shall in any way limit or impair the ability of any person to seek any legal or equitable remedy against any of the Defendants or any other person in any other proceeding.

III.

FINDINGS AND CONCLUSIONS

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason for delay. The Court therefore directs the entry of findings of fact, conclusions of law and orders of permanent injunction, monetary penalty and ancillary equitable relief, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), as set forth herein.

A. Findings of Fact

1. Defendant Cromwell Financial Services, Inc. is a Florida Corporation, incorporated in September 1992. It has been registered with the Commission as an introducing broker ("IB") since January 1993. During the relevant period, Cromwell operated pursuant to guarantee agreements with Universal Financial Holding Company ("UFHC") and National Commodity Corporation, Inc. ("NCCI"), which are both registered futures commission merchants ("FCM"). As a result, all of Cromwell's customers during the relevant period maintained accounts at UFHC or NCCI. Cromwell's main office is located in Deerfield Beach, Florida, and it also has branch

offices located in Fort Lauderdale, Pompano Beach, and Boca Raton, Florida. Cromwell has been named in three separate actions by the National Futures Association (“NFA”) for violations of NFA Rules, including sales and solicitation fraud, using misleading promotional materials and failing to adequately supervise brokers. Cromwell has also been named in 34 separate Commission reparations cases.

2. Defendant Philip Tuccelli currently resides in Deerfield Beach, Florida. He is the founder of Cromwell, and is Cromwell’s sole director and sole shareholder. Tuccelli has previously been registered with the Commission as an associated person (“AP”), but is not currently registered. Tuccelli manages Cromwell’s Deerfield Beach headquarters office.

3. Defendant Dennis Gee currently resides in Pompano Beach, Florida. He was registered as an AP with Cromwell until January 2004, and was the branch manager of Cromwell’s Fort Lauderdale branch office.

4. Defendant Richard Peluchette currently resides in Pompano Beach, Florida. He was registered as an AP with Cromwell from 1996 until July 2005. Peluchette was the branch manager of Cromwell’s Pompano Beach office.

5. Defendant Richard Astern currently resides in Wellington, Florida. He was registered as an AP with Cromwell from 2001 until March 2006, and was the branch manager of Cromwell’s Boca Raton office.

6. Defendant Michael Staryk III currently resides in Coral Springs, Florida. He was registered as an AP with Cromwell from 1994 until 2006. Staryk was also Cromwell’s compliance director during the relevant period.

7. Since 1993, when Cromwell was first registered with the NFA as an IB, it has been the subject of three regulatory actions by the NFA for violations of NFA rules by Cromwell employees, including those regarding sales solicitations. Defendant Tuccelli has been the subject of three NFA regulatory actions. Defendant Staryk has been the subject of two NFA actions. Defendant Gee has been the subject of two NFA actions and three Commission customer reparations Complaints. Defendant Peluchette has been the subject of one NFA arbitration. Defendant Astern has been named in one NFA action.

8. During the relevant period, Cromwell Sales Employees other than the Defendants ("Sales Employees") solicited prospective and existing customers by making cold-calls to individuals identified on lead-lists purchased from unrelated third parties. During these telephone solicitations, Cromwell Sales Employees invariably recommended that customers enter into trades in particular options on commodity futures contracts, such as options on heating oil futures or options on natural gas futures.

9. Cromwell Sales Employees were made personally responsible for any and all deficits in customers' accounts, whether due to margin calls, trading losses or any other circumstance. Thus, the Sales Employees were aware that most of Cromwell customers were not acquiring profits from trading through Cromwell. Moreover, Cromwell Sales Employees, including those charged in this action, were also required to keep a log of all phone calls or contacts with customers that mandated that they note any discussion of the value of the customer's account.

10. When soliciting prospective and existing customers, Cromwell sales Employees often made representations of material fact such as the following:

- a. Customers could easily double or triple their money within a couple weeks;
- b. The risk of customers losing their investment was very low;
- c. Certain recommended trades were highly likely to profit;
- d. By reinvesting after they had lost money, customers would be able to recoup all their losses and make additional money.

11. These representations were false or misleading, in part, because:

- a. the market in options on commodity futures contracts is highly speculative and the likelihood of realizing the described profits within the described time periods was remote at best;
- b. the Cromwell Sales Employees who made such claims had customers whom did not realize the described profits within the described time periods;
- c. the likelihood that any of the customers would actually profit from investing with Cromwell was substantially lower due to the very high commission fees, often as high as \$230.00 per contract traded; and
- d. the overwhelming majority — more than 85% — of Cromwell customers closed their accounts at a loss.

12. During the relevant period, Cromwell Sales Employees advised prospective and existing customers to obtain funds from any available source, even advising them to take money from more secure investments, such as stocks or mortgages, to invest in options on commodity futures contracts. In advising customers to obtain funds from such other investments, Cromwell Sales Employees represented that the investments they were recommending were more likely to profit than those other investments.

13. During the relevant period, Cromwell Sales Employees solicited customer funds by providing specific trade recommendations. In fact, most trades placed on behalf of Cromwell customers were based on the trade recommendations of Cromwell Sales Employees.

14. Cromwell Sales Employees often solicited customers with assertions that known or expected market conditions, including known weather events and seasonal trends, could result in substantial profits. As part of their sales solicitations, Cromwell Sales Employees regularly faxed or mailed previously published articles to prospective and existing customers, which were often several months old. Cromwell Sales Employees represented that these published articles provided support for their trading recommendations and that by trading in options on commodity futures contracts, prospective and existing customers could expect to make money on the basis of these known market conditions.

15. During the relevant period, Tuccelli was the founder and sole shareholder of Cromwell. He had been listed with the NFA as a principal of Cromwell since 1992. Tuccelli was also Cromwell's sole Director and reported to the Board (which was composed of only him) regarding its day-to-day operations. As Cromwell's Director, Tuccelli had responsibility to, *inter alia*: (1) develop, implement and distribute Cromwell's sales promotion materials; (2) oversee the administration of Cromwell's branch managers and the supervisors of its sales, trading, compliance, marketing, recruitment and training functions; (3) prepare sales scripts for Sales Employees' education and training; and (4) monitor trade recommendations with Cromwell's Branch Managers and Supervisors.

16. During the relevant period, the Defendants failed to supervise diligently Cromwell Sales Employees' solicitations of prospective and existing customers. Defendants failed either to develop or to implement an adequate program of supervision to detect and prevent Cromwell's Sales Employees from making misleading and

fraudulent statements to prospective and existing customers concerning the likely profitability of and risks from trading in options on commodity futures contracts. Defendants were required to diligently supervise the handling by Cromwell Sales Employees of all commodity interest accounts held by it.

17. Tuccelli managed the daily operations of Cromwell from the Deerfield Beach headquarters office. As the control person of Cromwell, Tuccelli was ultimately responsible for monitoring all Sales Employees' activities at all branches and ensuring their compliance with the rules, regulations and by-laws of the NFA, as well as with the Act and Commission Regulations.

18. Defendants Gee, Astern, and Peluchette were Branch Managers of Cromwell's Fort Lauderdale, Boca Raton, and Pompano Beach branches, respectively, throughout the relevant period. As Branch Managers, each had direct, supervisory responsibility over the Sales Employees of their respective branches. Defendants Gee, Peluchette and Astern were also responsible for communicating with Tuccelli regarding trade recommendations made by Cromwell's Sales Employees. Saryk was in charge of ensuring that compliance at every branch office was performed diligently and in keeping with all relevant rules and regulations. Thus, Defendants Gee, Astern, Saryk, and Peluchette were responsible for monitoring the Sales Employees' activities and ensuring their compliance with the rules, regulations and by-laws of the NFA, as well as with the Act and Commission Regulations.

19. Defendants Gee, Peluchette, Saryk, and Astern failed to develop or implement an adequate system of supervision to ensure that Cromwell's Sales Employees did not make fraudulent statements and/or omissions while soliciting prospective and

existing customers to trade in options on commodity futures contracts. Consequently, throughout the relevant period, Cromwell Sales Employees repeatedly made the fraudulent statements and/or omissions outlined herein while soliciting prospective and existing customers to trade in options on commodity futures contracts.

20. During the relevant period, as a general rule, Cromwell recorded only order confirmation conversations with customers and not all of the telephone sales solicitations made by its Sales Employees. These order confirmation conversations were conducted after Cromwell Sales Employees had used fraudulent sales pitches to solicit the customer, and were conducted at a rapid pace, including only a brief discussion of the trade that the customer was placing. Multiple customers complained that they were coached on how to answer these questions. Based on this coaching, customers understood that if they did not answer these questions appropriately they would be unable to take advantage of the investment opportunities about which the Sales Employees had just informed them.

21. During the relevant period, Defendants Gee, Peluchette, Saryk, and Astern failed to screen prospective Sales Employees to determine the nature or extent of the supervision each prospective Sales Employees would require. Furthermore, Defendants openly solicited Sales Employees who had previously worked at IBs that had been shut down for sales practice fraud.

B. Conclusions of Law

1. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or

is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

2. This Court has personal jurisdiction over the Defendants, who acknowledge service of the Summons and Complaint and consent to the Court's jurisdiction over them.

3. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002), in that the Defendants are found in, inhabit, or transact business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

4. During the relevant period, Cromwell Sales Employees, under the supervision of Defendants Tuccelli, Gee, Peluchette, Staryk, and Astern, made false and materially misleading sales solicitations to prospective and existing customers by, *inter alia*: (a) exaggerating the magnitude and likelihood of potential profit from trading in options on commodity futures contracts; (b) representing that their trade recommendations could result in large profits within short periods of time, while possessing information that their customers were actually losing money; (c) downplaying the risk of loss from trading in options on commodity futures contracts; and, (d) in light of the profit representations they were making, failing to advise such customers that more than 85% of Cromwell's customers lost money trading in options on commodity futures contracts.

5. Cromwell's Sales Employees knew or recklessly disregarded the fact that the representations and omissions of material fact, described in the above paragraph, were false or acted in an extreme departure from the standards of ordinary care by making such

representations or omitting material information. Consequently, these acts and practices violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulation 33.10, 17 C.F.R. § 33.10 (2004).

6. Cromwell's Sales Employees' misrepresentation of material facts such as these in soliciting funds from prospective and existing customers violates Section 4c(b) of the Act and Commission Regulation 33.10. *CFTC v. R. J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1329 (11th Cir. 2002). In general, all manner of omissions and misrepresentations of material fact regarding futures and options on futures transactions violate the anti-fraud provisions of the Act and Commission Regulations, including omissions and misrepresentations concerning the likelihood of profit, the risk of loss, and other matters that a reasonable customer would consider material to his investment decisions. *See, e.g., Miller v. CFTC*, 197 F.3d 1227, 1229, 1233 (9th Cir. 1999), *aff'g in part, rev'g in part In re Miller*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,297 at 46,344 (Mar. 12, 1998) (guaranteeing profits and promising wildly exaggerated returns constitutes fraud); *First Nat. Monetary Corp. v. Weinberger*, 819 F.2d 1334, 1340 (6th Cir. 1987) ("Misrepresentations as to a salesperson's knowledge and experience can also be actionable").

7. Failing to disclose to prospective and existing customers that more 85% of Cromwell customers lost money while simultaneously touting enormous profit potential of the investments, as Cromwell Sales Employees did here, constitutes fraud under Section 4c(b) of the Act and Commission Regulation 33.10. *CFTC v. Commonwealth Financial Group, Inc.*, 874 F. Supp. 1345, 1353-54 (S. D. Fla. 1994) ("Commonwealth salespeople have also improperly failed to disclose material facts about the trading

experience and past successes of themselves and Commonwealth . . . [including] Commonwealth's 80% or greater failure rate on its trading recommendations . . . and that the majority of Commonwealth customers have lost all or substantially all of the money that they invested."); *see also R.J. Fitzgerald*, 310 F.3d at 1332-1333; *Modlin v. Cane*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,059 at 49,550 (CFTC Mar. 15, 2000) ("a reasonable investor who hires a broker . . . would clearly find it material to learn that that broker had never closed an account with a profit.").

8. Because these violations by Cromwell's Sales Employees were done within the scope of their employment, Cromwell is therefore vicariously liable for these violations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002).

9. Defendant Tuccelli controlled Cromwell during the relevant period and either knowingly induced or did not act in good faith respecting the acts and practices of Cromwell's Sales Employees that constitute the violations of the Act and Commission Regulations. Defendant Tuccelli is therefore liable as a controlling person, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002), for those acts and practices that violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulation 33.10, 17 C.F.R. § 33.10 (2004),

10. Commission Regulation 166.3, 17 C.F.R. § 166.3 (2004), requires each Commission registrant, except an AP who has no supervisory duties, to diligently supervise the handling of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents relating to its business as a Commission registrant.

11. Cromwell, as a registered IB during the relevant period was responsible for developing and implementing an adequate supervisory system to ensure that its Sales Employees complied with the rules, regulations and by-laws of the NFA, as well as with the Act and Commission Regulations.

12. Cromwell's supervisory system was inadequate and Defendants failed to perform their supervisory duties diligently. *In re Murlas Commodities*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,485 at 43,161 (CFTC Sep. 1, 1995); *In re GNP Commodities, Inc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,219 (Commission August 11, 1992) *aff'd sub nom. Monieson v. CFTC*, 996 F.2d. 852 (7th Cir. 1993); *In re International Futures Corp.*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,993 at 49,202 (CFTC Jan. 27, 2000)

13. Under Commission Regulation 166.3, the Defendants had a duty to develop procedures for the "detection and deterrence of possible wrongdoing by its agents." *In re Daniel J. Collins*, 1998 CFTC Lexis 273, *12 (CFTC Nov. 10, 1998) (citing *Samson Refining Co. v. Drexel Burnham Lambert, Inc.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,596 at 36,566 (CFTC Feb. 16, 1990) (quoting *Lobb v. J.T. McKerr & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,568 at 36,444 (CFTC Dec. 14, 1989)). Thus "a showing that the registrant lacks an adequate supervisory system [standing alone] can be sufficient" to establish a breach of duty under Regulation 166.3. *Collins*, ¶ 27,194 at 45,744.

14. The lack of an adequate supervisory system can be established by showing that the registrant failed to develop proper procedures for the detection of wrongdoing. *CFTC v. Trinity Financial Group Inc.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep.

(CCH) ¶ 27,179 at 45,635 (S. D. Fla. 1997), *aff'd in relevant part, vacated in part and remanded sub nom. Sidoti v. CFTC*, 178 F.3d 1132 (11th Cir. 1999).

15. The violations herein are of a type that should have been detected by a system of supervision diligently implemented by Cromwell, Tuccelli, Gee, Peluchette, Saryk and Astern, because of the nature of the fraud violations and because the violations occurred repeatedly. *In re Paragon Futures Assoc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,849-50 (CFTC Apr. 1, 1992).

16. Defendants Cromwell, Tuccelli, Gee, Peluchette, Saryk, and Astern violated Commission Regulation 166.3, 17 C.F.R. § 166.3 (2004), because, among other reasons, they allowed Cromwell's Sales Employees to make material misrepresentations and omissions of material facts, as described herein.

17. During the relevant period Defendants failed to supervise diligently Cromwell Sales Employees' solicitations of prospective and existing customers. Defendants failed either to develop or to implement an adequate program of supervision to detect and prevent Cromwell's Sales Employees from making misleading and fraudulent statements to prospective and existing customers concerning the likely profitability of and risks from trading in options on commodity futures contracts. Defendants were required to diligently supervise the handling by Cromwell Sales Employees of all commodity interest accounts held by it. In failing to do so, Defendants violated Commission Regulation 166.3, 17 C.F.R. § 166.3 (2004).

18. Defendant Tuccelli controlled Cromwell during the relevant period and either knowingly induced or did not act in good faith respecting the acts and practices of Cromwell's Sales Employees that constitute the violations Commission Regulation

166.3, 17 C.F.R. § 166.3 (2004). Defendant Tuccelli is therefore liable as a controlling person, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002), for those acts and practices that violated Commission Regulation 166.3, 17 C.F.R. § 166.3 (2004).

IV.

ORDER OF PERMANENT INJUNCTION

IT IS HEREBY ORDERED that:

1. Defendants Cromwell and Tuccelli are permanently enjoined, restrained and prohibited from, directly or indirectly violating Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulation 33.10, 17 C.F.R. § 33.10 (2004), which prohibits fraud in connection with commodity option transactions.
2. Defendants are permanently enjoined, restrained and prohibited from, directly or indirectly violating Commission Regulation 166.3, 17 C.F.R. § 166.3 (2004), which requires each Commission registrant, except an AP who has no supervisory duties, to diligently supervise the handling of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents relating to its business as a Commission registrant.
3. Except as provided in paragraph IV.4, below, Defendants are permanently restrained, enjoined and prohibited from engaging, directly or indirectly, in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (“commodity interest”), including but not limited to, the following:
 - a. Trading on or subject to the rules of any registered entity as that term is defined by Section 1(a)(29) of the Act, as amended, 7 U.S.C. § 1a(29)(2002);
 - b. Soliciting, receiving, or accepting any funds in connection with the purchase or sale of any commodity interest contract;

- c. Engaging in, controlling or directing the trading for any commodity interest account for or on behalf of any other person or entity, directly or indirectly, whether by power of attorney or otherwise;
- d. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9) (2004), or acting as a principal, agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9) (2004); and
- e. Engaging in any business activities related to commodity interest trading.

4. Defendants Tuccelli, Astern, Peluchette, Gee and Saryk each may open a commodity interest account for their own personal trading only.

5. Defendants are further permanently restrained, enjoined and prohibited from filing a petition in bankruptcy without providing the Commission with prompt notice by Certified Mail of such filing, as required by Part VI, paragraph 59 of this Order.

6. The injunctive provisions of this Order shall be binding upon Defendants and any person insofar as he or she is acting in the capacity of officer, agent, servant, or attorney of Defendants and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in active concert or participation with Defendants.

V.

ORDER OF RESTITUTION AND CIVIL MONETARY PENALTY

IT IS FURTHER ORDERED THAT:

A. Restitution

1. Defendants Gee, Peluchette, Astern and Saryk shall pay restitution in the following amounts, plus post-judgment interest:

- a. Gee: \$523,000;
- b. Peluchette: \$241,000;
- c. Astern: \$285,000; and
- d. Saryk: \$130,000.

2. Defendants Cromwell and Tuccelli shall pay, jointly and severally, restitution in the amount of \$9,200,000, plus post-judgment interest. Tuccelli's restitution obligation shall, however, be capped at \$2,000,000, plus post-judgment interest.

3. Post-judgment interest on the Defendants' restitution obligations shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

4. Appointment of Monitor: To effect payment by Defendants and distribution of restitution, the Court appoints Daniel Driscoll, Executive Vice-President of the NFA or his successor, as Monitor ("Monitor"). The Monitor shall collect restitution payments from Defendants, and make distributions as set forth below. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, he shall not be liable for any action or inaction arising from his appointment as Monitor, other than actions involving fraud.

5. Defendants shall make restitution payments under this Order in the name "Cromwell Financial Services, Inc. Settlement Fund" and shall send such restitution payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's, or bank money order, to Daniel Driscoll, Monitor, National Futures

Association, 200 W. Madison Street #1600, Chicago, Illinois 60606-3447 under cover letter that identifies the paying Defendant and the name and docket number of the proceeding. Each Defendant shall simultaneously transmit copies of the cover letter and the form of payment to (a) the Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and (b) the Chief, Office of Cooperative Enforcement, at the same address.

6. The Monitor shall oversee Defendants' restitution obligations, and shall have discretion to determine the manner for distribution of funds in an equitable fashion to defrauded Cromwell customers, as appropriate, or may defer distribution until such time as it deems appropriate. The Commission shall cooperate with the Monitor as appropriate to provide such information as the NFA deems necessary and appropriate to identify Cromwell customers to whom the Monitor, in his sole discretion, may determine to include in any plan for distribution of any restitution payments.

B. Civil Monetary Penalty

1. Good cause exists for the imposition of civil monetary penalties ("CMPs"), upon Defendants.

2. Pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), and Commission Regulation 143.8(a)(1)(ii), 17 C.F.R. § 143.8(a)(1)(ii) (2004), this Court may impose an order directing each Defendant to pay a CMP, to be assessed by the Court, in amounts of not more than \$120,000 for each violation of the Act and Regulations described herein, or triple the monetary gain to the Defendant.

3. The Defendants shall each pay to the Commission a civil monetary penalty in the following amounts, plus post-judgment interest:

- a. Cromwell: \$9,200,000;
- b. Tuccelli: \$250,000;
- c. Gee: \$120,000;
- d. Peluchette: \$120,000;
- e. Astern: \$120,000; and
- f. Saryk: \$50,000.

4. Post-judgment interest shall accrue beginning on the date of entry of this Order and will be calculated by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

5. The Defendants shall pay the CMP by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made by other than electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 S. Macarthur Blvd.
Oklahoma City, OK 73169
Telephone: 405-954-6569

If payment is to be made by electronic funds transfer, the paying Defendant shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. The paying Defendant] shall accompany payment of the penalty with a cover letter that identifies the paying Defendant and the

name and docket number of the proceedings. The paying Defendant shall simultaneously transmit copies of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and the Chief, Office of Cooperative Enforcement, at the same address.

C. Priority Of Monetary Sanctions And Partial Payments

1. All payments by Defendants pursuant to this Order shall first be applied to satisfaction of their restitution obligations. After satisfaction of their restitution obligations, payments by Defendants pursuant to this Order shall be applied to satisfy Defendants' civil monetary penalty obligations.

2. Any acceptance by the Commission and/or Monitor of partial payment of Defendants' restitution obligations and/or civil monetary penalty obligations shall not be deemed a waiver of the respective requirement to make further payments pursuant to this Consent Order, or a waiver of the Commission's and/or Monitor's right to seek to compel payment of any remaining balance.

D. Equitable Relief Provisions

The equitable relief provisions of this Order shall be binding upon Defendants and any person who is acting in the capacity of officer, agent, employee, servant or attorney of Defendants, and any person acting in active concert or participation with [Defendant] who receives actual notice of this Order by personal service or otherwise.

VI.

MISCELLANEOUS PROVISIONS

IT IS FURTHER ORDERED THAT:

1. Entire Agreement and Amendments: This Order incorporates all of the terms and conditions of the settlement among the parties hereto. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.
2. Invalidation: If any provision of this Order or the application of any provisions or circumstances is held invalid, the remainder of the Order and the application of the provision to any other person or circumstance shall not be affected by the holding.
3. Waiver: The failure of any party hereto or of any customer at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Order. No waiver in one or more instances of the breach of any provision contained in this Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Order.
4. Acknowledgements: Upon being served with a copy of this Order after entry by the Court, each Defendant shall sign an acknowledgment of such service and serve such acknowledgments on the Court and the Commission within seven (7) calendar days.
5. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to

this action.


6. Notices: All notices required to be given by any provision of this Order to the Commission shall be sent certified mail, return receipt requested, as follows:

Notice to the Commission: Attention - Director of Enforcement, Commodity Futures Trading Commission, Division of Enforcement, 1155 21st Street, NW, Washington, D.C. 20581; and,


Notice to the NFA: Attention – Daniel Driscoll, National Futures Association, 200 W. Madison St., #1600, Chicago, IL 60606-3447

7. There being no just cause for delay, the Clerk of the Court shall enter judgment against Defendants Cromwell, Tuccelli, Gee, Peluchette and Astern forthwith and without further notice.

CONSENTED TO AND APPROVED BY:


Philip Tuccelli, as authorized representative of Cromwell Financial Services, Inc.

Date: July 23, 2007


Phillip Tuccelli, individually

Date: July 23, 2007

Richard Astern, individually

Date: _____

Richard Peluchette, individually

Date: _____

Dennis Gee, individually

Date: _____

this action.

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Notice to the Commission: Attention - Director of Enforcement, Commodity Futures Trading Commission, Division of Enforcement, 1155 21st Street, NW, Washington, D.C. 20581; and,

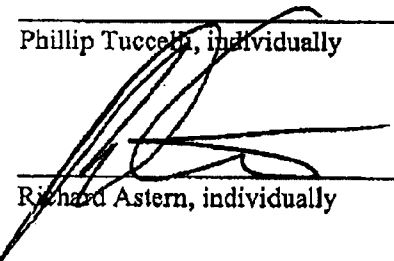
Notice to the NFA: Attention – Daniel Driscoll, National Futures Association, 200 W. Madison St., #1600, Chicago, IL 60606-3447

7. There being no just cause for delay, the Clerk of the Court shall enter judgment against Defendants Cromwell, Tuccelli, Gee, Peluchette and Astern forthwith and without further notice.

CONSENTED TO AND APPROVED BY:

Philip Tuccelli, as authorized representative
of Cromwell Financial Services, Inc. Date: _____

Phillip Tuccelli, individually Date: _____


Richard Astern, individually Date: 7-25-07

Richard Peluchette, individually Date: _____

Dennis Gee, individually Date: _____

this action.

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CONSENTED TO AND APPROVED BY:

Philip Tuccelli, as authorized representative
of Cromwell Financial Services, Inc. Date: _____

Phillip Tuccelli, individually Date: _____

Richard Astern, individually Date: _____

Richard Peluchette, individually Date: _____

Dennis Q. Gee
Dennis Gee, individually Date: 8-2-07

this action.

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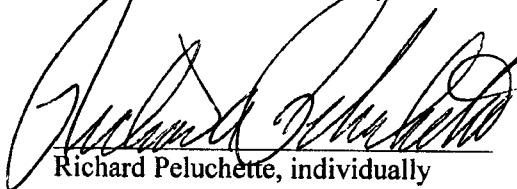
7. There being no just cause for delay, the Clerk of the Court shall enter judgment against Defendants Cromwell, Tuccelli, Gee, Peluchette and Astern forthwith and without further notice.

CONSENTED TO AND APPROVED BY:

Philip Tuccelli, as authorized representative
of Cromwell Financial Services, Inc. Date: _____

Phillip Tuccelli, individually Date: _____

Richard Astern, individually Date: _____


Richard Peluchette, individually Date: 7/23/07

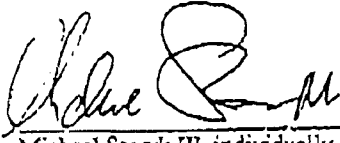
Dennis Gee, individually Date: _____

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Approved for Entry:

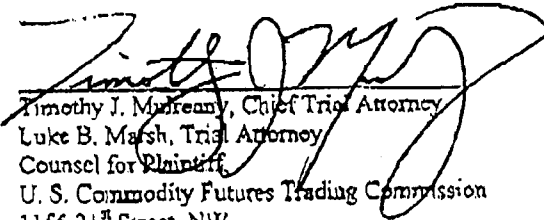
Christopher King
Homer Bonner
1200 Four Seasons Tower, 12th Floor
1441 Brickell Avenue
Miami, FL 33131
(305) 350-5100

Date: _____



Date: 8/3/07

Michael Staryk III, individually, Pro Se



Timothy J. Mulreany, Chief Trial Attorney
Luke B. Marsh, Trial Attorney
Counsel for Plaintiff
U. S. Commodity Futures Trading Commission
1155 21st Street, NW
Washington, D.C. 20581
(202) 418-5306

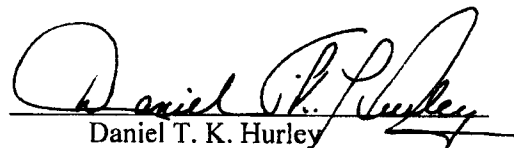
Date: 10/25/07

Jeffrey Spill
Attorney for Plaintiff
New Hampshire State Bureau
of Securities Regulation
State House Room 204
Concord, New Hampshire 03301-4989
(603) 271-7933 (facsimile)

Date: 10/25/07

ORDERED AND ADJUDGED:

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 27th
day of Oct., 2007.


Daniel T. K. Hurley
United States District Judge

cc.
All counsel and *pro se* parties of record