UNITED STATES OF AMERICA
before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of	)	
U.S. SECURITIES & FUTURES CORP., *et al.*,	)	CFTC Docket No. 01-01
Respondents.	)	

INITIAL DECISION

Before: George H. Painter, Administrative Law Judge

Appearances:

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Jiping Wu, Daniel G. Reynolds

PROCEDURAL HISTORY

The United States Commodity Futures Trading Commission (hereinafter "Commission") filed a six-count Complaint against Respondents U.S. Securities & Futures Corporation (hereinafter "USSFC"), Huaya Lu Tung (hereinafter "Tung"), John O. Hing (hereinafter "Hing"), Thomas H. Gong (hereinafter "Gong"), Jiping Wu (hereinafter "Wu"), Nancy A. Bellassai (hereinafter "Bellassai"), Thomas V. White (hereinafter "White"), Justus Enterprises, Inc. (hereinafter "Justus"), Daniel G. Reynolds (hereinafter "Reynolds") and Michael Skrable (hereinafter "Skrable") on October 26, 2000.[1] The Complaint charged each of the Respondents with violations of the Commodity Exchange Act (hereinafter "Act"), and Commission Regulations (hereinafter "Regulations") for the time period beginning in early 1996 through October 1998.[2]

Respondent White, suffering from a chronic health condition, passed away on August 29, 2002.[3] The Division of Enforcement (hereinafter "Division") subsequently filed a motion to dismiss the claims against White due to his death. The Court granted the motion and dismissed the Complaint against White on November 14, 2002.[4] However, his investigative testimony and deposition testimony were both admitted into record. Respondent Tung failed to appear at the Hearing, thus her Answer to the Complaint was struck from the record. By Order dated November 22, 2002, the Court granted the Division's Motion for Default Judgment and found Tung guilty of the charges alleged against her in the Complaint.[5] Tung was, accordingly, ordered to pay a civil monetary penalty of $220,000 and was further ordered to cease and desist

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[1] Complaint and Notice of Hearing, filed by the Commission on Oct. 26, 2000.
[2] *Id.* at 2.
[3] Post-Hearing Brief, filed by the DOE on November 4, 2002 at 2.
[4] Order Dismissing Complaint, Nov. 14, 2002.
[5] *See* Default Order Against Respondent Huaya Lu Tung, Nov. 22, 2002.

from committing further violations of the Act and Regulations, as alleged in the Complaint.[6] Respondent Justus failed to answer the Complaint, and by Order dated February 2, 2001, the Court found it in Default.[7] The imposition of sanctions was deferred until the issuance of this Initial Decision.

FINDINGS OF FACT[8]

The following findings of fact are based upon evidence adduced at trial; the voluminous exhibits admitted into the record, and the Court's first-hand evaluation of the witnesses' demeanor, testimony, and credibility.

Respondents

1. Respondent USSFC is a New York corporation which maintains its principal place of business at 100 Wall Street, 22nd Floor, New York, New York 10005.[9] USSFC initially registered with the Commission as an introducing broker (hereinafter "IB") on February 25, 1994.[10] USSFC subsequently registered as an FCM on October 8, 1994.[11] USSFC is also registered with the Securities and Exchange Commission (hereinafter "SEC") as a securities broker-dealer.[12]

2. Defaulting Respondent, Huaya Lu Tung, owns a majority interest in USSFC directly and indirectly through Travelway International Limited, a corporation wholly-owned by

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[6] *Id.*
[7] *See* Partial Grant of the Motion of the Division of Enforcement for Entry of Default Order Against Justus Enterprises, Inc.
[8] The Division's Proposed Findings of Fact are well supported by the evidence and many have been adopted herein.
[9] USSFC's Answer to Complaint, ¶5.
[10] *Id.*
[11] *Id.*
[12] *Id.*

Tung.[13] While Tung is a principal of USSFC and Chairman of the Board, she has never been registered with the Commission.[14]

3. By Order dated November 22, 2002, Tung was found in default and guilty of all charges alleged against her in the Complaint.[15] Tung was ordered to pay a civil monetary penalty totaling $220,000 and was also ordered to cease and desist from committing further violations of the Act and Regulations.[16]

4. Respondent John O. Hing is the President of USSFC and a member of the Board.[17] He has also been registered with the Commission as an Associated Person (hereinafter "AP") and principal of USSFC since February 1994.[18] In 1999, Hing became the Chief Executive Officer ("CEO") of USSFC and Vice Chairman of the Board. From 1994 to 1999 Hing served as the President and Director of USSFC.[19]

5. Respondent Thomas H. Gong has been employed by USSFC since 1994.[20] He acts as the Vice-President of Compliance and has been both a member and Secretary of the USSFC Board of Directors since 1994.[21] Gong is also registered as an AP of USSFC.[22]

6. Since March 1994, Respondent Jiping Wu has been employed by USSFC as Chief Financial Officer ("CFO").[23] Wu is also registered as an AP of USSFC and is a member of

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[13] *Id.* at ¶8.
[14] *Id.*
[15] *See* Default Order Against Respondent Huaya Lu Tung, Nov. 22, 2002.
[16] *Id.*
[17] USSFC's Answer to Complaint, ¶9.
[18] *Id.*
[19] *Id.*
[20] *Id.* at ¶10.
[21] *Id.*
[22] *Id.*
[23] *Id.* at ¶11.

USSFC's Board of Directors.[24] Between July 1998 and September 1999, Wu was also registered as a commodity trading advisor (hereinafter "CTA") with the Commission.[25]

7. Deceased Respondent Thomas V. White was Vice-President at USSFC and manager of its International Division between 1996 and 1999.[26] He became President and a member of the Board of Directors in May 1999.[27] White was registered with the Commission as an AP of USSFC since February 1996, and as a principal since April 1996.[28]

8. Respondent Nancy A. Bellassai has been registered as an AP of USSFC since November 1995 and has served as the Branch Office Manager of the main office since January 1997.[29] Bellassai managed USSFC's International Desk and supervised APs employed there.[30] In 1996 Bellassai also worked for Currency & Commodity Brokers GmbH ("CCB") while she was associated with USSFC providing commodity trading advice for CCB's customer accounts.[31] Bellassai is married to Respondent Reynolds.[32] Bellassai has never been registered with the Commission as a CTA.[33]

9. Hennig Fasch (hereinafter "Fasch") is a German national who founded and managed CCB, and a predecessor company, ICS Commodity Services GmbH ("ICS").[34] Since August 1996 Fasch has been a non-trading member of the New York Cotton Exchange ("NYCE") and since March 1996, a member of the New York Futures Exchange, Inc.

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[24] *Id.*
[25] *Id.*
[26] *Id.* at ¶6.
[27] *Id.*
[28] *Id.*
[29] Bellassai Answer, ¶7.
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *See* DOE Ex. 409, Stipulations (7/23/02) "German Fraud Stipulations"at ¶1.

("NYFE").[35] At the time of trial Fasch was serving a prison sentence in Germany for his conviction for fraud in connection with CCB's activities.[36] Fasch was neither a party nor a witness,[37] to the instant case. However, a description of Fasch's associations with the respondents is necessary for the purpose of establishing the facts surrounding the CCB allocation scheme.

10. Justus was originally incorporated by Fasch as Fasch Enterprises, Inc. (hereinafter "FEI") on March 5, 1996.[38] FEI changed its name to Justus on April 21, 1998. Justus has never been registered with the Commission.[39]

11. ICS, who is not a party to the instant case, was a German commodity brokerage firm with a New York office.[40] White and Bellassai managed ICS' New York office.[41]

12. Commodity & Currency Brokers GmbH ("CCB"), who is not a party to the instant case, was a German commodity brokerage firm.[42] CCB's letterhead listed the location of Justus' office in New York.[43]

13. Bellassai maintained a close business relationship and friendship with Fasch. Over the course of four years she met with him at least six times.[44] She traveled to Germany three times and met with Fasch while there and also met with him twice in New York.[45] On one occasion, Bellassai even attended a birthday party with her husband, Reynolds, at Fasch's home

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[35] Tr. 470-475; Ex. 17.
[36] *See* Ex. 512.
[37] Fasch's deposition was not offered into evidence at trial and therefore was not considered as evidence. Tr. at 250-21-261:14.
[38] Exhibit 501A Investigative Testimony of Daniel Reynolds at 35:8-15.
[39] *Id.*; All references to FEI include Justus
[40] Tr. at 19:10-18; 20-21.
[41] *Id.*
[42] Ex. 87.
[43] Ex. 56.
[44] Tr. at 88:6-11.
[45] Tr. at 81:12-82:20; Tr. at 76:16-77-6.

in Hamburg, Germany.[46] Bellassai also visited CCB's office in Hamburg.[47] Finally, Bellassai met with Fasch in Cancun on one occasion.[48]

14. Respondent Daniel Reynolds has been registered with the Commission as a floor broker since April 1983.[49] He has never been registered as a CTA.[50] He is married to Bellassai.[51]

15. Reynolds referred to himself as the "Director" of Justus and managed the daily operations of Justus.[52] He facilitated the incorporation of FEI, now known as Justus.[53] Reynolds also played an important role in setting up FEI's office, including arranging for the office space, furniture and equipment.[54] Additionally, Reynolds hired and supervised employees, including an accountant, attorney and the traders who traded the CCB account.[55]

16. Reynolds also maintained a friendship and business relationship with Fasch over the course of several years. Reynolds referred to a 1998 trip to Germany to visit Fasch as mostly a "social" trip.[56] Reynolds also helped Fasch to obtain a seat on the New York Futures Exchange (hereinafter "NYFE") by serving as a sponsor and arranging for a second person to serve as a sponsor on Fasch's application.[57] Additionally, Reynolds shared a joint account with Fasch at Saul Stone, a registered Futures Commission Merchant, whereby both placed trades into the account and shared in the profits equally.[58]

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[46] Tr. at 81:12-82:20.
[47] Tr. at 84:11-85:22.
[48] Tr. at 87:18-88:11.
[49] Reynolds Answer ¶7.
[50] *Id.*
[51] *Id.*
[52] Tr. at 325:7-18; 326:3-5; Ex. 300.
[53] Tr. at 242:2-4; 244:2-15; Ex. 67-A.
[54] Tr. at 241:7-22; 371:25-372:5.
[55] Id. at 241, 247, 271, 325, 371, 376.
[56] Tr. at 256:1-18.
[57] Tr. at 225:13-226:7; Ex. 414.
[58] Tr. at 216:23-217:25.

17. Settled Respondent Michael Skrable was employed as a CTA by Justus and traded on behalf of CCB.[59] After reaching a settlement with Skrable, the Commission entered an Order finding that he participated in fraudulent activities in conjunction with a foreign broker.[60]

The Fraudulent Allocation Scheme

18. From early 1996 through October 1998, USSFC and its senior executives acted in concert with CCB, a foreign broker with offices in Hamburg, Germany, to commit an extensive transatlantic scheme to defraud CCB customers.[61] Individual customers were solicited in Germany to invest their money in managed accounts.[62] Customers were lured by false assurances of a high profit-potential and the purported low-risk attendant to trading on United States futures exchanges.[63]

19. CCB directed its New York-based trading advisor, Justus, and other trading advisors to place unallocated day trades each trading day through USSFC.[64]

20. Reynolds was Justus' Office Manager from 1996 to 1998.[65] Beginning in January 1996, before Justus was incorporated and continuing through 1996, CCB compensated Reynolds for his trading advice.[66] Reynolds provided trading advice for at least 167 CCB accounts.[67] Initially, Reynolds received compensation ranging from $2-$4 per round turn to trade for CCB's

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[59] Tr. at 375:376:9.
[60] *In re U.S. Securities & Futures Corp., et al.,* [2000-2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) Par. 29, 117 (CFTC July 26, 2002).
[61] Ex. 409, Stipulations (7/23/02) "German Fraud Stipulations" at ¶3-7.
[62] *Id.* at ¶3.
[63] *Id.*
[64] Ex. 409, Stipulations (7/30/02) "German Fraud Stipulations at ¶3.
[65] Tr. at 241:7-22; 242:2-4; 244:2-15; 247:2-14; 249:10-253:3; 256:2-3; 319:14-320:2; 371:25-372:5; 386:17-19; Ex. 67A.
[66] Tr. 239:24-240:3; 270:8-16; Exs. 61, 98 and 62.
[67] Ex. 460A.

accounts.[68] Later, when Reynolds became Justus' Office Manager, he received a flat fee of $10,000 per month for his trading advice and supervision of Justus traders.[69] 12.

21. Reynolds received a daily fax or telephone call from CCB stating the number of contracts to be traded.[70] Reynolds determined and assigned to each trader trading for the CCB accounts the number of contracts they were responsible for trading that day.[71] Reynolds also collected the bills from the traders at Justus and faxed them to Germany, and distributed paychecks to the traders.[72]

22. Reynolds controlled the trading of traders at Justus.[73] Reynolds had the sole authority to close another trader's position at Justus without authorization from anyone in Germany.[74] Reynolds also had the authority to make payments for Justus without specific prior authorization.[75]

23. Bellassai was paid directly by CCB to make trading recommendations for at least nine months in 1996 during the time she worked as an AP and supervisor of USSFC's International Division's order desk.[76] She recommended trades for at least 58 CCB accounts.[77] Bellassai billed CCB directly for her trading advice.[78] Bellassai received compensation ranging from $2-$4 per round turn for her trading advice.[79]

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[68] Tr. at 77:2-78:22; 166:8-167:5; 490:2-10; Ex. 510A Driscoll Decl. at ¶9.
[69] Tr. 270:8-16.
[70] Tr. at 271:9-15; 376:10-15; Ex. 444.
[71] Tr. at 272:9-12; 376:15-17.
[72] Tr. at 386:5-8; 386:17-19.
[73] Tr. at 436:12-14; 348:14-16; 399:11-17; 435:22-436:14; 347:11-13; 349:23-350:7; 398:20-399:13.
[74] Tr. at 349:23-350:7; 376:12-17.
[75] Tr. at 319:14-320:2.
[76] Bellassai Answer at ¶19; Tr. at 166:16-24.
[77] Ex. 460A.
[78] Tr. at 176:23-179:7.
[79] Tr. at 77:2-78:22; 166:8-167:5; 490:2-10; Ex. 510A Driscoll Decl. at ¶9.

24. Between 1996 and 1998, USSFC opened more than 700 accounts for customers introduced by CCB.[80] These accounts shall be referred to as "subaccounts," the term employed by Respondents.[81]

25. The subaccounts bore characteristics typical of an individual customer account.[82] To illustrate, many of the subaccounts carried cash balances with no futures or options activities for long periods of time, which would be atypical for an omnibus account.[83] The account sizes were also typical of retail customer accounts.[84]

26. Bellassai made futures trading recommendations for CCB customer accounts without specifying to which subaccounts the orders should be placed at USSFC.[85] The trading restrictions, trade allocations and high commissions virtually precluded CCB customers from making any profits and instead caused them to incur significant losses.[86]

27. Expert testimony confirmed that the trading strategies and commission structures employed by CCB and Justus did not give customers a reasonable opportunity to make a profit from their investments.[87] During their testimony, some Justus traders also admitted that their trading recommendations, given the tight stops and the commission rate charged, had no realistic possibility of generating profits for CCB customers.[88]

28. During the "loading phase" winning trades were allocated to new customer accounts, creating the illusion that the investment would be a profitable venture and thereby

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[80] Ex. 409, Stipulations (7/30/02) "Facts Relating to Summary of Records Prepared by Ronald Carletta" at 2¶; Ex. 422.
[81] Ex. 409.
[82] Ex. 510A Driscoll Decl. at ¶9.
[83] Ex. 422.
[84] Ex. 510A Driscoll Decl. at ¶9.
[85] Tr. at 491:15-492:2.
[86] Ex. 510A Declaration of Daniel Driscoll dated June 17, 2002 ("Driscoll Decl.") at ¶9.
[87] Ex. 510A Declaration of Daniel Driscoll dated June 17, 2002 ("Driscoll Decl.") at ¶ 9.
[88] Tr. at 499:11-21; 343:17-345:4; 435:1-21.

convincing the new customers to contribute large amounts of additional funds.[89] Losing trades were allocated to older accounts whose owners were less likely to make additional investments.[90] The records generated and maintained by USSFC, and reviewed by White and Bellassai show a conspicuous pattern of winning trades being allocated to newer accounts.[91]

29. Aside from unfairly allocating trades in the manner described above, trades were also unfairly allocated by breaking the legs of heating oil crack spreads[92] into separate accounts to the detriment of customers.[93] In some cases, block orders of outright futures trades were allocated disproportionately among accounts without regard to the equity in the accounts.[94]

30. Once a CCB customer account lacked sufficient funds to trade futures, CCB would purchase deep out-of-the-money options (with small premiums), converting the remaining capital into commissions.[95]

31. CCB customers lost approximately $19 million through commissions and losing trades.[96] Together with Justus, CCB brought in some $14 million in customer funds through commissions.[97] USSFC collected over $2 million in commissions from CCB customers and Justus received over $900,000 in fees from CCB.[98] CCB's business comprised approximately thirty percent of USSFC's futures trading volume.[99]

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[89] Ex. 409, Stipulations (7/23/02), German Fraud Stipulations at ¶3.
[90] *Id.*
[91] Ex. 409, Stipulations (7/30/02) "Additional Facts Relating to Michael McLaughlin Summaries" at ¶9-18; Exs. 427A and 427B.
[92] *Crack spread*: In energy futures, the simultaneous purchase of crude oil futures and the sale of petroleum product futures to establish a refining margin. In a spread transaction the different futures contracts (legs) are not executed with different parties, rather all of the futures contracts of the spread are executed opposite the same party.
[93] Tr. at 120:11-15; 122:24-25; 123:2-3; 124:23-25; 125:2-13; Exs. 401-C3, 404C3; Ex.510A Driscoll Decl. at ¶9.
[94] Ex. 510A Driscoll Decl. at ¶9.
[95] Ex. 422.
[96] Ex. 409, Stipulations 7/30/02, "Facts Relating to Summary of Records Prepared by Ronald Carletta" at ¶3, exs. 422A-1 and 422A-2.
[97] *Id.*
[98] Ex. 409 ¶3, 422A-1, 422A-2, 450, 456.
[99] White Inv. Tr. at 110:16-20.

32. Upon receiving funds for investment, CCB deducted an up-front fee of 15% from the customer account.[100] Once trading began, CCB charged investors a round-turn commission of $90 per trade and an additional $5 in fees.[101]

33. CCB wired the funds remaining after the 15% deduction to USSFC's segregated customer funds bank account.[102] Although CCB allegedly had an omnibus account[103] with USSFC, it opened more than 700 "sub-accounts" in this alleged omnibus account.[104]

34. Each transfer confirmation, sent by CCB, included a five-digit number corresponding to either an existing subaccount number on USSFC's books or a new subaccount to be created for CCB.[105]

35. USSFC used eight-digit account numbers, with the first three digits representing an office code and the next five identifying the individual account.[106] CCB's omnibus account with USSFC was delineated by the numeric code, 099-99000.[107] The 700+ subaccounts opened at CCB's direction all followed a pattern of 099-99xxx. The five digits, which CCB provided in its wire confirmations were the 99xxx component of the eight-digit account number.[108]

36. Justus' role in the scheme was that of an intermediary between CCB in Hamburg and USSFC.[109] CCB's fraudulent allocation was accomplished through Justus and the CTAs

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[100] Ex. 515B Investigative Testimony of Tom White ("White Inv. Tr.") at 324:3-14; Ex. 515D White Inv. Tr. Ex. 93.
[101] Tr. at 49:18-20, 50:21-23, Ex. 36, p. 1.
[102] Ex. 515B Investigative Testimony of Tom White ("White Inv. Tr.") at 324:3-14; Ex. 515D White Inv. Tr. Ex. 93.
[103] *Omnibus Account*: An account carried by one futures commission merchant with another futures commission merchant in which the transactions of two or more persons are combined and carried in the name of the originating broker rather than designated separately.
[104] Ex. 409, Stipulations (7/30/02) "Facts Relating to Summary of Records Prepared by Ronald Carletta" at 2¶; Ex. 422.
[105] Ex. 515B White Inv. Tr. at 324:15-25.
[106] Tr. at 43:4-23, 542:14-544:10.
[107] Tr. at 58:23-59:9.
[108] *Id.*
[109] *See* DOE Ex. 409, Stipulations (7/30/02) "Additional Facts relating to Michael McLaughlin Summaries" at ¶ 9, Ex. 427A and 427B.

working for it.[110] From April 1996 to December 1997, Justus received at least $922,507 in advisory fees from CCB for futures orders placed at USSFC by Justus traders.[111]

37. On each trading day, CCB directed Justus and its CTAs, including Reynolds, Skrable, and for a period of time Bellassai, to place a certain number of round-turn day trades through USSFC.[112] Justus and the CTAs had the discretion to determine the commodity, delivery month, limit price, timing and characteristics of the trade.[113] However, CCB required that all the trades be day trade with narrow stops.[114]

38. When placing orders, the Justus traders did not provide any subaccount identification information to USSFC.[115] Rather, the only account information taken down on USSFC order tickets was the number "99" and sometimes the first initial of the person placing the order.[116]

39. USSFC took the Justus orders without written authorization allowing Justus to trade for CCB.[117] There were no written authorizations permitting certain individuals to place orders for Justus on behalf of CCB.[118]

40. From April 1996 through December 1997, Justus received at least $922,507 in advisory fees from CCB for futures orders placed in CCB's accounts at USSFC by traders working for Justus.[119]

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[110] *Id.*
[111] DOE Ex. 450, 456, 402.
[112] Tr. at 490:8-24; 271:3-276:2; 166:1-170:25; 342:8-345:17; 371:5-376:25.
[113] Tr. at 376:12-25.
[114] Tr. at 377:8-12.
[115] Tr. 378:22-379:3.
[116] Tr. at 378:5-379:3; USSFC Answer ¶ 80, 81.
[117] Bellassai Answer at ¶19; Tr. at 168:1-170:20; Ex. 36. The power of attorney portion of USSFC's and CCB's Futures Customer Agreement is blank. USSFC Answer, ¶25; DOE Ex. 38, 401.
[118] *Id.*
[119] Ex. 450; Ex. 456; Ex. 402.

41. White and Bellassai facilitated the post-execution allocation of trades by accepting orders from Justus traders without subaccount identification on the office order tickets.[120] In particular, the order tickets did not specify the five-digit subaccount number into which the trade would later be placed.[121]

42. USSFC order tickets consisted of three separate plies: a pink, yellow, and white sheet.[122] Upon confirmation of an order's execution, one of the plies typically goes to keypunch operators who would enter the transaction into USSFC's accounting system.[123] However, tickets generated for CCB, demarcated by a "99," were not separated out and were not forwarded for entry until CCB determined which subaccount would receive the trade.[124] This practice was inconsistent with USSFC's ordinary procedures and written policies.[125]

43. Instead, White and Bellassai arranged to keypunch the CCB trades into USFC's accounting database at the end of the day.[126] After the results of the trades were known and after the positions were offset[127], the order desk at USSFC's International Division compiled a list of the trades done for CCB and faxed the list to CCB.[128] CCB then faxed a list back to USSFC, allocating the trades to specific accounts.[129] The trades were then keypunched into USSFC's accounting database directly in accordance with CCB's allocation fax.[130]

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[120] USSFC Answer, ¶25; Tr. 378:22-379:3.
[121] USSFC Answer, ¶25; Tr. at 96-99; DOE Ex. 515A at 39-40.
[122] Tr. 98:17-100:13.
[123] Tr. 98:17-99:10.
[124] Tr. at 100:10-25; DOE Ex. 500B at 1565-157; DOE Ex. 515A at 39-40.
[125] Tr. at 98:17-99:14; Ex. 500B Investigative Testimony of Nancy Bellassai ("Bellassai Inv. Tr.") at 156:19-157:13; Ex. 515A White Inv. Tr. at 39:10-40:2.
[126] Tr. at 96:25-99:14, 100:5-25, 544:25-548-11, 686:20-687:20.
[127] *Offset*: Liquidating a purchase of futures contracts through the sale of an equal number of contracts of the same delivery month, or liquidating a short sale of futures through the purchase of an equal number of contracts of the same delivery month.
[128] Tr. at 100:10-16; 101:2-15; 104:14-21; Exs. 83 and 403, 106:19-21; Exs. 83, 85, 403, 403C-3, 404 and 404C-3.
[129] *Id.*
[130] *Id.*

44. White and Bellassai knew that the allocation of the trades to the five-digit accounts was not fair and equitable and that CCB was defrauding its customers, because both had a reasonable opportunity to observe CCB's allocation patterns.[131]

45. Justus knew that the manner in which the futures orders were conducted and the method by which the futures trades were allocated to the CCB customer accounts defrauded CCB customers.[132] Justus also knew that its trading recommendations, considering the narrow stops and the high commission rate, had no realistic possibility of generating profits for CCB customers.[133]

46. USSFC sent daily confirmation and monthly account statements for each of the five-digit subaccounts to CCB.[134] CCB forwarded these statements, bearing USSFC's letterhead, to its customers and USSFC was aware of this practice because at least two of these statements were sent to back to USSFC from a CCB customer.[135]

47. USSFC received at least three letters from at least two CCB customers raising concerns or questions about how CCB was churning their accounts.[136] USSFC only forwarded the letters to CCB without making any inquiry into the CCB accounts.[137] In one instance, Bellassai wrote an insulting word in German[138] on a customer's letter before forwarding it to CCB.[139] The fraudulent allocation scheme continued until the Hamburg police shut down CCB's operations and arrested its owners in October 1998.[140]

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[131] USSFC Answer, ¶25; Tr. at 96-99; DOE Ex. 515A at 39-40.
[132] Tr. at 271:9-15; 373:8-18; 376:10-25; 377:8-12; 378:22-379:3; 431:3-12; Exs. 402, 444, 450 and 456.
[133] Tr. at 166:8-167:5; 490:2-10.
[134] Tr. at 101:2-15; 104:14-21; Exs. 83, 403 and 403C-3; Ex. 409, Stipulations (7/23/02) "German Fraud Stipulations" at ¶7; Tr. at 106:19-21; Ex. 422.
[135] *Id.*; Exs. 109-110.
[136] Exs. 108-110.
[137] Tr. at 570:8-580:13; 581:20-583:14; 152:4-155:24; Exs. 407, 109-110.
[138] *arschloch*, English translation: asshole.
[139] Tr. at 152:4-155-24; Exs.109-110.
[140] Ex. 409, Stipulations (7/23/02) "German Fraud Stipulations" at ¶2.

USSFC Supervision

48. Hing, a Harvard MBA, worked at Merrill Lynch for over twenty years as a "futures specialist".[141] He initially worked at Merrill Lynch as a Futures Specialist then later became a Futures Sales Manager.[142] Following that position he worked as a Commodities Research Director for five years and then later as Director of Strategic Planning and Director of Acquisitions.[143] Finally, Hing then worked for Brockport, a subsidiary of Merrill Lynch, for several years.[144]

49. Hing hired Gong to head the compliance department and delegated all compliance responsibilities to him.[145] Hing hired Wu to be the CFO and delegated all responsibilities for filing financial reports to him.[146] Both Gong and Wu have a Master's in Economics from Johns Hopkins.[147] However, Gong had no prior experience working in the compliance department of a FCM and Wu had no previous knowledge or expertise in accounting.[148]

50. Contrary to USSFC practice and policy, no five-digit account identification numbers were recorded on the order tickets for CCB trades.[149] Hing, Bellassai, Gong and Wu never challenged this practice.[150]

51. Although USSFC normally requires an individual to have Power of Attorney to place trades in an account, traders, including Bellassai, without such authority frequently called

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[141] Respondents' Proposed Findings of Fact at 48.
[142] *Id.* at 51.
[143] *Id.*
[144] *Id.*
[145] Tr. at 506:17-507:16; 654:14-19; Tr. at 654:14-19; Ex. 507A Hing Inv. Tr. at 24:25-25:16.
[146] Tr. at 655:4-9; Ex. 507A Hing Inv. Tr. at 25:
[147] Respondents' Proposed Findings of Fact at 47.
[148] Tr. 506:17-507:16; 654:14-19; Ex. 507A Hing Inv. Tr. at 24:25-25:16; 25:17-26:8.
[149] USSFC *et al* Answer ¶ 25; Tr. at 96:25-99:14; Exs. 38 and 401.
[150] Tr. at 96:25-98:16; Ex. 505A Gong Inv. Tr. at 141:3-149:24, 152:4-158:1.

in trades for the CCB account.[151] Hing, Bellassai, Gong and Wu never questioned those unauthorized trades.[152]

52. Gong reported directly to Hing through February 1999[153], and thereafter to both Hing and White.[154] However, neither Hing nor White took any affirmative steps to supervise Gong to ensure that he was satisfactorily performing compliance review for the operations of USSFC. Hing and Gong delegated compliance functions to White and for the most part, allowed him to run the International Division order desk as a separate business without any compliance supervision.[155]

53. Gong was responsible for developing and implementing USSFC's compliance manual and procedures and for training APs at USSFC.[156] Gong failed to diligently perform his duties as Head of the Compliance Department. For example, from 1994 to 1999 Gong neglected to revise the compliance manual to reflect USSFC's change from an IB to a FCM.[157] Further, USSFC lacked a procedure for administering an omnibus account that had several subaccounts.[158] Gong never devised a policy to address this issue.[159]

54. Gong reviewed various USSFC operations to determine whether they were in compliance with USSFC's procedures and the Commission's regulations.[160] In his reviews of order tickets written by the International order desk, Gong turned a blind eye to the fact that tens

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[151] Bellassai Answer at ¶19; Tr. at 102:1-16; 166:16-24; 524:12-525:23; 682;6-17; Ex. 36. The power of attorney portion of USSFC's and CCB's Futures Customer Agreement are blank.
[152] Bellassai Answer at ¶ 19; Tr. at 102:1-16; 166:16-24.
[153] Ex. 505C Gong Inv. Tr. at 331:21-335:12.
[154] Ex. 507B Hing Inv. Tr. at 190:24-192:20; 208:20-212:16.
[155] Tr. at 529:15-530:3 (Gong testified that he delegated the responsibility of monitoring who placed orders for the CCB accounts to White and the International order desk.); 544:13-545:16 (Gong testified that he left it up to White to supervise the allocation of trades to the CCB account and denied any further knowledge of it.); 568:10-569:5; 697:11-22.
[156] Gong Response at ¶8; Tr. at 511:7-513:23.
[157] Ex. 505B Gong Inv. Tr. at 97:17-23; 98:21-102:6; Gong Response at ¶21.
[158] Tr. at 548:12-551:12.
[159] Tr. at 549:20-552:8.
[160] Tr. 511:4-512:20.

of thousands of USSFC order tickets filled out by the International Division only had an office code instead of a five-digit account number.[161]

Failure to File Required Notices with the Commission

55. As USSFC's CFO, Wu was in charge of USSFC's financial reporting.[162] Wu supervised the preparation of segregation calculations and quarterly and year-end financial statements.[163] Wu was responsible for making and collecting margin calls, as well as liaising with USSC's independent accountant.[164] Wu also coordinated audits by the National Futures Association (hereinafter "NFA") and other regulatory agencies.[165] Wu reported directly to Hing and Tung prior to February 1999, and then to White and Hing.[166]

56. From July 31, 1997 to September 5, 1997, USSFC's adjusted net capital fell below the required amounts, requiring USSFC to file "early warning" notifications to the Commission.[167] USSFC did not provide the Commission timely notice of the decrease in USSFC's net capital below the "early warning" threshold.[168]

57. On March 31, September 30, 1999 and on January 31, 2000, USSFC had a reduction in its adjusted net capital by 20% or more compared to its previously reported adjusted net capital.[169] USSFC also did not provide timely written notice of the reductions to the Commission.[170]

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[161] Ex. 505B Gong. Inv. Tr. at 97:17-23; 98:21-102:6; Gong Response at ¶ 21.
[162] Ex. 409, Stipulations (7/30/02) "Facts Relating to Accounting Issues" at ¶ 2; Tr. at 640:18-641:7.
[163] Tr. at 634:5-7; Ex. 409, Stipulations (7/30/02) "Facts Relating to Accounting Issues" at ¶2.
[164] Tr. at 640:18-641:7.
[165] *Id.*
[166] USSFC Answer at ¶65; Tr. at 626:17-24.
[167] Ex. 409, Stipulations (7/30/02) "Facts Relating to Accounting Issues" at ¶¶ 13,17.
[168] *Id.* at ¶¶ 14, 17.
[169] USSFC's tentative net capital for January 31, 2000 was $1,849,746 (Ex. 41I, Bates stamped no. 2006-030-003972) compared with tentative net capital for December 31, 1999 of $3,052,569 (Ex. 441G, Bates stamped no. 2006-030-004009), representing a thirty-nine percent decline in net capital.

Form 8-T

58. Janos Turoczi (hereinafter "Turoczi") was an AP employed by USSFC.[171] Jolanta Stolczne was one of Turoczi's customers at USSFC during 1996. [172]

59. USSFC received a letter dated June 7, 1996, from Stolczne's lawyer alleging that Turoczi had churned her account and made material representations.[173] Gong responded to the June 7th letter, denying the allegations.[174]

60. USSFC received a second letter dated July 3, 1996, from Stolczne's lawyer which described Stolczne's lack of investment experience, Turoczi's guarantee that her $10,000 investment would provide her with a weekly return of $500, and Turoczi's excessive unauthorized trading of the account, which allowed him to collect $3,504 in commissions in a period of ten weeks.[175]

61. USSFC ultimately settled the matter with Stolczne on October 30, 1996 by paying Stolczne $3,500, the amount of Turoczi's commissions.[176]

62. Turoczi left the country in June 1996 and did not return.[177] Gong and Hing discussed whether to terminate Turoczi, who they could not locate.[178]

63. On December 5, 1996, Gong filed USSFC's Form 8-T with the NFA, reporting that Turoczi had not been the subject of any material complaint or legal proceeding by a customer or the subject of any internal investigation or disciplinary proceeding.[179]

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[170] Ex. 409, Stipulations (7/30/02) "Facts Relating to Accounting Issues" at ¶¶14, 15.
[171] Ex. 409, Stipulations (10/7/02), at ¶¶ 1-3.
[172] Ex. 409, Stipulations (10/7/02), at ¶¶ 1-3; see also Ex. 409; Stipulations (7/30/02), "Additional Facts Relating to Janos Turoczi's Customers: Stolczne & Levai," at ¶ 1; Tr. at 593:12-25, 709:4-17.
[173] *Id.;* Tr. at. 592:16-595:24.
[174] Tr. at 592:15-596:5; 598:22-24; Ex. 459.
[175] Ex. 459; Tr. at 598:22-24.
[176] Ex. 409, Stipulations (7/30/02), "Additional Facts Relating to Janos Turoczi's Customers: Stolczne & Levai," at ¶ 1; Tr. at 593:10-25, 709:4-17.
[177] Tr. at 599:8-601:7.
[178] Tr. at 599:25-600:6.

64. Gong also responded "no" to a question on the Form 8-T for Turoczi inquiring whether there was any reason to believe that Turoczi may have violated any commodities laws or regulations while employed at USSFC.[180]

65. Gong also stated on the Form 8-T for Turoczi that he had left voluntarily.[181] Hing stated that he terminated Turoczi at Gong's recommendation and then later testified that Turoczi was not terminated but rather allowed to voluntarily resign.[182]

66. On September 18, 1996, Gong filed a Form 8-T for AP William Chippas (hereinafter "Chippas").[183] Attached to the Form 8-T was a letter from Gong stating that USSFC was conducting an investigation of unauthorized trading by Chippas.[184] The Form 8-T signed by Gong stated that while associated with USSFC, Chippas was not the subject of any material compliant by a customer or any internal investigation.[185]

DISCUSSION

The Allocation Scheme

In July of 2002 Hennig Fasch, a German national and founder and manager of CCB was convicted in Hamburg, Germany, for masterminding a scheme to defraud German investors of millions of dollars by fraudulently allocating trades after the results were known.[186] As the story of the CCB allocation scheme unfolded, it came to light that Fasch could not have perpetrated the fraud upon CCB customers without the aid of his friends in the U.S.

CCB directed Justus, its New York based trading advisor, and other individual trading advisors including, Reynolds, Bellassai and Skrable, to place hundreds of unallocated day-trades

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[179] Tr. at 597:17-600:14.
[180] Tr. at 601:8-19.
[181] Tr. at 597:1-601:19.
[182] Tr. at 712:22-713:25.
[183] Tr. at 589:24-592:4.
[184] Tr. at 589:24-592:4; Ex. 440L, p.1.
[185] *Id.*

each trading day through USSFC. CCB then directed USSFC to allocate profitable trades to newer accounts in order to induce customers into investing substantial additional funds. Losing trades were allocated to older customer accounts because older customers were less likely to invest more funds. Customer funds were usually depleted through commissions and trading losses within two to three months. By executing roughly 90,000 unallocated futures orders, USSFC assisted CCB and Justus in earning approximately $14 million in commissions, while causing customers to lose more than $19 million in more than 700 customer accounts. USSFC took home more than $2 million for its role in the fraud.

Respondent Bellassai

Nancy Bellassai began working for the New York office of ICS Commodity Services GmbH (hereinafter "ICS"), a German commodity brokerage firm incorporated by Fasch, in the early 1990s where she met Thomas White.[187] ICS later became part of Index Futures Group.[188] Bellassai and White both ran a branch office for Index as co-branch managers.[189] When Index closed its branch offices two years later, Bellassai and White moved to American Futures Group (hereinafter "AFG") where they remained through the end of 1995 when they both began working at USSFC.[190] Fasch had been trading customer funds at ICS through an account at a U.S. FCM long before the inception of CCB,[191] and Bellassai and White were both aware of this given their longstanding business relationships and friendships with Fasch. However banal these facts may seem at first glance, they reveal an interconnected set of contacts that were crucial to the execution of the CCB fraudulent allocation scheme. Such an elaborate and massive scam

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[186] Ex. 512.
[187] Tr. at 19:10-18; *See also* Ex. 409 "German Fraud Stipulations (7/23/02)," ¶2.
[188] Tr. at 20:22-24.
[189] Tr. at 21:3-8.
[190] Tr. at 21:18-23.
[191] Ex. 409, "German Fraud Stipulations (7/23/02)", ¶¶1-2.

could not have transpired had it not been for the special relationships that existed between Fasch, White and Bellassai, whereby each trusted and depended on one another to play out their respective roles in the fraud.

Whereas Fasch was the mastermind behind the fraud, Bellassai and White were the executors of the fraud. Bellassai took orders from Justus traders for CCB customers without taking down account information and directed International Division order desk personnel to compile lists of the offsetting trades done for the CCB accounts which showed the trades' results. These lists were faxed to CCB at different times during the day. CCB then faxed a list to USSFC indicating to which accounts the trades would be assigned and Bellassai directed the order desk personnel to keypunch CCB trades into USSFC's accounting database in accordance with CCB's allocation fax. Additionally, Bellassai recommended trades for the CCB accounts and created order tickets without account identification information for nine months in 1996. The aforementioned actions were a deviation from USSFC's business practices and respondents offered no reasonable or plausible explanations for such deviations.

Although Bellassai tried to portray herself as an innocent USSFC employee who was duped into participating in CCB's fraud, her credibility is, for the most part, doubtful. Bellassai's answers were evasive and unconvincing. For instance, during testimony she demonstrated a selective memory concerning critical details that would implicate her in CCB's fraudulent allocation scheme.[192] She also consistently emphasized that the authority to administer CCB's subaccounts were within White's purview and not hers.[193] As already noted, White is now dead and can neither refute nor verify statements that Bellassai made in her testimony.

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[192] Tr. at 50:24-52:11; 53:3-7; 68:8-70:21; 108:2-16; 109:14-110:14; 136:2-18; 147:22-148:12; 151:24-152:18; 155:4-22; 156:7-21; 157:2-14.

During testimony, Bellassai also denied any knowledge of letters from customers complaining of CCB's handling of their accounts. Nevertheless, it is clear that she saw at least one of them as she took the time to write an insulting word in German on the letter before forwarding it to CCB. In addition to handling at least one CCB customer complaint, Bellassai testified that she knew the multiple subaccounts represented individual customer accounts. Furthermore, given the restricted nature of the trading, the inequitable pattern of allocations[194], the consistent trading losses and large commission payouts and the digressions from USSFC's standard business practices, Bellassai knew of CCB's fraudulent scheme.

Even if we were to assume the unlikely possibility that Bellassai did not have actual knowledge of the fraudulent scheme, her fiduciary duties to CCB customers would require her to at least inquire into the suspected fraud in the face of overwhelming evidence suggesting that something was amiss, which Bellassai failed to do. Nonetheless, the weight of evidence indicates that Bellassai knew of the fraud.

A futures broker owes a fiduciary duty to the customer, even a customer with whom the broker is not in direct privity.[195] In *U.S. v. Dial* the 7th Circuit Court stated:

> [I]t [is] fraud to fail to "level" with one to whom one owes fiduciary duties. The essence of a fiduciary relationship is that the fiduciary agrees to act as his principal's alter ego rather than to assume the standard arm's length stance of traders in a market.[196]

The fiduciary also owes the principal, in this case CCB customers, a duty to inquire when the fiduciary suspects fraud.[197] Bellassai owed CCB customers fiduciary duties because CCB was

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[193] Tr. at 55:2-12; 57:10-58:22; 99:15-100:25; 138:10-20; 163:2-164:15; 181:23-182:21.
[194] Ex. 409, Stipulations (7/30/02) "Additional Facts Relating to Michael McLaughlin Summaries" at ¶9-18; Exs. 427A and 427B.
[195] *United States v. Ashman*, 979 F.2d 469, 478 (7th Cir. 1992) *citing United States v. Dial*, 757 F.2d 163, 168 (7th Cir. 1985).
[196] *Dial* at 168.
[197] *In re Three Eight Corp.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,749 at 40,445 (CFTC June 16, 1993) (floor broker has duty to investigate suspicious orders before executing).

USSFC's customer and testimony established that Bellassai knew the subaccounts were customer accounts.

Additionally, §§4b(a)(i)(iii) liability requires a showing that Bellassai:

> (i) cheated or defrauded or attempted to cheat or defraud another person, or (iii) willfully deceived such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract,
>
> in connection with any order to make or the making of a contract of sale of a commodity for future delivery made or to be made for or on behalf of any other person.[198]

The facts establish that Bellassai willfully participated in the CCB allocation scheme which operated to cheat and defraud CCB customers in connection with the sale of futures contracts in violation of §§4b(a)(i)(iii) of the Act.

A clear inference that Bellassai aided and abetted CCB in defrauding its customers through the allocation scheme naturally arises from the facts. Bellassai and Fasch maintained a long-standing business relationship and friendship over a period of four years and met with each other at least six times during the course of their business relationship.[199]

To establish aiding and abetting liability under §13(a), there must be a showing that:

> (1) the Act was violated;
> (2) the respondent had knowledge of the wrongdoing underlying the violation and;
> (3) the named respondent intentionally assisted the primary wrongdoer.[200]

As both parties have stipulated, CCB violated §§4b(a)(i) and (iii) of the Act by swindling its customers out of millions of dollars through the fraudulent allocation scheme. Thus, the first prong of §13(a) has been established. Based on the facts describing Bellassai's involvement in

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[198] 7 U.S.C. §6b(a)(i)(iii).
[199] Tr. at 88:6-11; 81:12-82:20; 76:16-77:6; 84:11-85:22;87:18-88:11.

the allocation scheme, it is clear that she knowingly and willfully helped CCB to unfairly and inequitably allocate executed trades to CCB customer accounts after the results were known, thus establishing aiding and abetting liability.

Although at this point the CCB allocation scheme seems clever enough, there is a missing piece to the puzzle. CCB needed a means through which it could trade in US futures, being that it was based in Germany. This final missing piece falls squarely into place when a third party comes into the picture. In 1996 Daniel Reynolds, who happens to also be Bellassai's husband, helped Fasch to incorporate Fasch Enterprises, Inc. (which later changed its name to Justus, hereinafter "Justus") in order to trade in US futures markets on behalf of CCB. CCB's letterhead listed the location of Justus as CCB's New York office. At the direction of Fasch, Reynolds obtained a lease in the World Trade Center where Justus ran its operations.

Justus' role in the CCB fraud was to place unauthorized trades for CCB customer accounts through USSFC. In placing trades for CCB accounts, Justus traders never provided account information to the International Division's order desk at USSFC, which enabled CCB to later allocate trades with the advantage of knowing which trades were profitable and which ones were losing. Justus traders were also restricted to trading parameters that limited the trades to day trades with narrow stops, which had no realistic possibility of generating profits for CCB customers.

Given Bellassai's active role in the CCB allocation fraud, her testimony, her association with Fasch and marriage to Reynolds, it is clear that she was aware of Justus' fraudulent activities. In addition to Bellassai's knowledge of Justus' role in the scheme, Bellassai also aided and abetted Justus' violations of §§4b(a)(i) and (iii) of the Act by preparing recap sheets

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[200] *In re Nikkhah*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,129 at 49,888 n. 28 (CFTC May 12, 2000) *citing In re R&W Technical Services, Ltd.*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,582

that she faxed both to CCB and to Justus.[201] The recap sheets listed the quantity, price, commodity and the trader who placed the trade.[202] Justus used the recap sheets to determine the number of trades that each of its traders would recommend for the day.[203]

In addition to helping CCB to allocate trades after the results were known, Bellassai also recommended trades for the CCB accounts. During her testimony she admitted to trading the CCB accounts for approximately nine months. Bellassai recommended trades for at least 58 CCB accounts and had discretion over the nature and timing of futures transactions entered into on behalf of CCB customers. She telephoned her orders from the International Division's order desk to the floor and mailed and faxed bills to CCB for her trading advice. Additionally, CCB paid Bellassai between $2 and $4 per round turn for her commodity trading advice. Although Bellassai provided trading advice to over 15 customers in exchange for compensation, she was not registered with the Commission as a Commodity Trading Advisor.

Under §4m of the Act any CTA who uses the mails or any instrumentality of interstate commerce in connection with his business is required to be registered with the Commission, unless the CTA does not provide trading advice to more than fifteen persons during the proceeding twelve-month period or hold himself out to the public as a CTA.[204] A person is a CTA if that person:

> (a) engages in the business of advising others, either directly or through publications or writings, as to the value or the advisability of trading in futures contracts or options on futures contracts
>
> (b) for compensation.[205]

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at 47,746 (CFTC Mar. 16, 1999.
[201] Tr. at 303:23-304:14.
[202] Tr. 101:5-15; 104:22-24; Exs. 83 and 403.
[203] Tr. 101:5-15; 104:22-105:4.
[204] 7 U.S.C. §6m.
[205] 7 U.S.C. §1a(5)(A).

Based on the facts described above, Bellassai acted as an unregistered CTA in violation of §4m of the Act.

The facts also establish Bellassai's culpability under §4o . Under Section 4o of the Act it is unlawful for any CTA, whether registered, required to be registered, or exempted from registration[206], to:

> (A) use the mails or any means or instrumentality of interstate commerce to "employ any device, scheme, or artifice to defraud any client . . . or prospective client" or
>
> (B) "engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client . . . or prospective client."[207]

Although §4o(1)(A) requires scienter[208], §4o(1)(B) does not.[209] The evidence indicates that Bellassai possessed the requisite guilty knowledge to necessary establish §4o(1)(A) liability and Bellassai's mere participation in CCB's fraudulent loading scheme, without more, makes her liable under §4o(1)(B) of the Act.

As a manager of International Division at USSFC Bellassai supervised order desk personnel. Bellassai not only failed to supervise the International Division's order desk personnel to ensure USSFC's compliance with the Act and Commission Rules, but also directed USSFC employees to enter trades for CCB subaccounts in accordance with CCB's allocation fax instead of directly from the order tickets, which should have contained account identification numbers. Each Commission registrant, with the exception of APs with no supervisory duties, is required to diligently supervise transactions of commodity interest accounts handled by its

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[206] *CFTC v. Savage*, 611 F.2d 270, 281 (9th Cir. 1979).
[207] 7 U.S.C. §6o.
[208] *In re Commodities Int'l Corp.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,943 at 44,564 (CFTC Jan. 14, 1997).
[209] *Messer v. E.F. Hutton & Co.*, 847 F.2d 673, 677 (11th Cir. 1988); *First Nat'l Monetary Corp. v. Weinberger*, 819 F.2d 1334, 1341 (6th Cir. 1987).

partners, officers, employees and agents relating to its business as Commission registrant.[210] Bellassai's failure to supervise USSFC employees in violation of Regulation 166.3 is clearly manifested in that she continuously directed the order desk personnel to contravene USSFC's practices and procedures on a daily basis in order to help facilitate the CCB allocation fraud.

Respondent Reynolds

Daniel Reynolds was the "man-in-charge" at Justus, the one who ensured that this essential piece in the puzzle functioned efficiently to play out its part in the CCB allocation scheme. As previously noted, Justus existed for the sole purpose of facilitating CCB's allocation scheme. In addition to setting up Justus' office in New York, Reynolds exercised considerable authority over the day-to-day operations of Justus and controlled the trading of traders at Justus. Justus traders learned of their job responsibilities from Reynolds and reported directly to Reynolds instead of Fasch. Although Reynolds denies ever holding himself out as the "Director of Justus," one of Justus' traders referred to Reynolds as "the head of trading" at trial.

A controlling person is someone who has the authority to direct the management and policies of the firm and who "'possessed the power or ability to control the specific transaction or activity upon which the primary violation was predicated, even if such power was not exercised.'"[211] To establish liability as a controlling person under §13(b) of the Act[212], the respondent must either (1) knowingly induce, directly or indirectly, the acts constituting the violation; or (2) fail to act in good faith.[213] Knowing inducement requires a showing that "the controlling person had knowledge of the core activities that constitute the violation at issue and

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[210] 17 C.F.R. §166.3; *See In re Paragon Futures Ass'n.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC Apr. 1, 1992).
[211] *Monieson v. CFTC*, 996 F.2d 852,859 (7th Cir. 1993) *quoting Donohoe v. Consolidated Operating & Prod. Corp.*, 982 F.2d 1130, 1138 (7th Cir. 1992).
[212] 7 U.S.C. §13c(b).
[213] *In re Apache Trading Corp.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,251 at 38,794 (CFTC Mar. 11, 1992).

allowed them to continue."[214] Notwithstanding Reynolds' attempt to absolve himself of responsibility for Justus' actions and liabilities by characterizing his role at Justus as that of a mere employee and nothing more, Reynolds was at least a *de facto* controlling person of Justus because none of the other traders had any noteworthy interactions with Fasch.

Reynolds was aware that CCB was trading customer funds and even conceded during testimony that CCB might have had customers.[215] Other traders at Justus also testified that they were aware that CCB was trading customer funds.[216] Although knowing that they were trading customer accounts, Justus traders never provided account information to USSFC when placing trades,[217] thereby enabling CCB to allocate trades after the results were known.

Additionally, given Reynolds' extensive background as a trader, Reynolds knew or should have known that Justus' strict trading parameters and high commissions had no realistic possibility of generating profits for CCB customers. Reynolds could not have ignored the blatant fact that CCB and Justus collected high commissions while CCB customers suffered huge losses, as this was reflected in Justus' own records.[218] Reynolds knowingly induced Justus' violations of §§4a(b)(i)(iii)[219] of the Act and is therefore liable for these violations as a controlling person under §13(b).[220]

Aside from managing the daily operations of Justus, Reynolds also traded for Justus in violation of §4m of the Act[221] because he was not a registered CTA. He recommended trades for

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[214] *In the Matter of Guttman*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,337 at 46,561-4 (CFTC Apr. 27, 1998) *citing In re Speigel,* [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,103 at 34,767 (CFTC Jan. 1988).
[215] Tr. at 333:2-336:14.
[216] Tr. at 353:2-23; 373:15-18; 417:20-22; 437:8-25.
[217] Tr. at 378:22-379:3.
[218] Justus' books show that its trading resulted in $803,263.50 loss in 1996; 958,134.56 loss in 1997 and $511,059.30 loss in 1998; Ex. 434D.
[219] 7 U.S.C. §6b(a)(i)(iii).
[220] 7 U.S.C. §13c(b).
[221] 7 U.S.C. §6m.

at least 167 CCB customer accounts and telephoned his orders to USSFC's International Division's order desk. For his trading advice CCB paid Reynolds between $2 and $4 per round turn. Reynolds was later paid a flat fee of $10,000 per month for his trading advice and for supervising other traders at Justus.

Reynolds is also liable for Justus' violations of §4o[222] as a controlling person pursuant to §13b.[223] As discussed above, Justus was an essential component of the CCB fraud equation, operating as a medium through which CCB could trade in US futures markets. Although Justus was not registered with the Commission as a CTA, Justus was a CTA providing trading advice to CCB customers for compensation. Justus traders also routinely telephoned orders on behalf of CCB customers without providing account information, thus allowing CCB to unfairly allocate trades after the results were known.

Justus also knew that CCB was defrauding its customers given the striking pattern of heavy losses to customers while CCB profited from high commissions. A Justus trader even acknowledged in his testimony at trial that he became aware that CCB was unfairly allocating trades after he "slowly put pieces together" over time.[224] Justus had a sufficient guilty knowledge of CCB's fraudulent scheme to defraud its customers in order to constitute the scienter requirement of §4o(1)(A) of the Act.[225] Justus also knowingly participated in the CCB fraud by making trade recommendations and by handling the futures orders in a manner that helped CCB to defraud its customers, thus establishing §4o(1)(B) liability.[226] As a controlling person of Justus, Reynolds is liable for these violations.

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[222] 7 U.S.C. §6o.
[223] 7 U.S.C. §13c(b).
[224] Tr. at 431:3-12.
[225] 7 U.S.C. §6o; *See also Commodities Int'l Corp.* at 44,564.

USSFC's Supervision

The people in charge at USSFC could have detected and prevented the fraud, but instead they chose to ignore the fraudulent activity that was taking place right before their very eyes. As the facts concerning USSFC's supervision of its employees and the compliance function take shape, the omissions rather than the actions of those in charge become the focal point of this discussion.

In 1993 John Hing approached Huaya Lu Tung with a business plan detailing the creation of a company to be initially registered as an Introducing Broker.[227] Tung provided the capital, investing half a million dollars, and Hing did all the groundwork in setting up and running USSFC's initial operations including hiring and supervising personnel.[228] Even though Thomas Gong had minimal compliance experience, Hing hired him as compliance officer at the recommendation of Tung.[229] Hing also hired Jiping Wu, who had no previous knowledge or expertise in accounting, as CFO at Tung's recommendation.[230] Together this team of professionals worked hard at turning a blind eye to clear indications of fraud, thus enabling the CCB allocation scheme to occur.

Respondent Hing

From 1993 to 1999 Hing was the President of USSFC. Additionally, since 1999 Hing has served as the Chief Executive Officer ("CEO") of USSFC and Vice Chairman of the Board. Hing exercised general control over USSFC's operations including, signing checks, approving wire transfers from USSFC's bank accounts, and entering into agreements on behalf of USSFC. Hing also oversaw the compliance function as well.

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[226] 7 U.S.C. §6o.
[227] Tr. at 549:25-651:4.
[228] Tr. at 650:22-651:25; 654:5-655:23.
[229] Tr. at 654:5-19.

Controlling person liability is discussed above under the analysis of Reynold's liability as a controlling person of Justus. However, for the sake of clarification with the instant set of circumstances, control has also been defined as "the authority to tell someone what not to do as well as the authority to tell the person what to do."[231] Under this standard, a person need not actually dictate the offending actions in order for him to be considered a controlling person, but rather he needs only to possess the authority to direct someone's actions.[232]

Hing possessed the requisite authority to be deemed a controlling person of USSFC. He also failed to act in good faith because he did not reasonably supervise USSFC employees, thereby allowing them to participate in the CCB allocation fraud. Hing was responsible for supervising Gong who was the Vice-President of Compliance. Hing failed, nevertheless, to realize Gong's incompetence and if he was aware of it, failed to take affirmative steps to ensure that certain deficiencies of the compliance function were corrected. Hing also directly supervised White, and, to some extent Bellassai, who were both blatantly contravening USSFC's practices and procedures in order to facilitate the CCB allocation fraud on a day-to-day basis. Hing is, accordingly, liable as a controlling person for USSFC's violations of §§4b(a)(i) and (iii)[233] pursuant to §13(b).[234]

In the same vein, Hing also failed to diligently supervise USSFC employees and agents in violation of Regulation 166.3.[235] Hing was a Commission registrant who was generally responsible for all activities of USSFC.

Under Regulation 166.3, a Commission registrant is required to:

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[230] Tr. at 654:25-655:14.
[231] *In the Matter of Gutman*, Comm. Fut. L. Rep. [1996-1998 Transfer Binder] (CCH) ¶ 27,337 at 46,561-4 (CFTC Apr. 27, 1998).
[232] *Id.*
[233] 7 U.S.C. §6b(a)(i)(iii).
[234] 7 U.S.C. §13c(b).
[235] 17 C.F.R. §166.3.

> diligently supervise the handling by its partners, officers, employees and agents . . . 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.[236]

"[The] duty to supervise . . . include[s] the broader goals of detection and deterrence of possible wrongdoing by its [the registrant's] agents."[237] Evidence of violations, which "should be detected by a diligent system of supervision, either because of the nature or because the violations have occurred repeatedly" is probative of a firm's failure to supervise.[238] Furthermore, "in appropriate circumstances, a showing that the registrant lacks an adequate supervisory system, standing alone," can establish a violation of Regulation 166.3.[239]

Regulation 166.3 seeks to protect customers by establishing a system of checks and balances whereby it is expected that other officials in the firm would review Commission registrants.[240] Hing consistently contravened this purpose through his omissions whether intentional or inadvertent. Hing hired Gong, who had no previous experience or training in futures compliance work to head up the Compliance Department of USSFC. Gong was responsible for developing and implementing USSFC's compliance manual and for assuring that USSFC's practices and procedures were followed. However, the evidence shows that Gong was unable to effectively perform his job responsibilities. Had Hing been diligently performing his responsibility to supervise Gong, he would have discovered the defects in the compliance function and could have taken steps to correct them.

Furthermore, Hing testified that he sometimes gave complaints to White to handle instead of Gong, who was the Compliance Officer and whose responsibility was to address customer

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[236] *Id.*
[237] *See Lobb v. J.T. McKerr & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,568 at 36,444 (CFTC Dec. 14, 1989).
[238] *See Paragon* at 38,850.
[239] *Id.*

complaints.[241] White, having the business relationship with the client, was the least objective in dealing with customer complaints about CCB because he benefited directly from CCB's business. In fact, the evidence reveals that White, himself, was an active participant in the allocation fraud. Thus, Hing's approach in handling customer complaints about the CCB accounts was, in effect, leading the sheep to the wolf.

Hing also allowed gross violations of USSFC policies to persist without making a reasonable inquiry into suspicious practices, such as, keypunching CCB trades into USSFC's accounting database in accordance with CCB's allocation fax instead of directly from the order tickets and omitting account information on CCB order tickets. USSFC's policies also required a power of attorney form on file allowing certain individuals to place trades in an account, however, many traders lacking a power of attorney were calling in trades on behalf of CCB accounts.

The fact that recurring violations of USSFC's practices and policies went undetected for so long is probative of inherent flaws in the compliance function and, consequently, Hing's failure to supervise USSFC's employees. Hing is, therefore, liable for failing to diligently supervise USSFC employees and its agents in violation of Regulation 166.3.[242]

Hing is also liable as a controlling person for USSFC's violations of Commission Regulations 1.12(b) and (g) for failure to diligently supervise USSFC's operations and employees to ensure that USSFC filed required notices with the Commission. As an FCM, USSFC is required to maintain its adjusted net capital at an amount at least equal to the

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[240] *Id.* (The basic purpose of Commission Rule 166.3 is to protect customers by ensuring that their dealings with the employees of Commission registrants will be reviewed by other officials in the firm.)
[241] Tr. at 697:7-698:5.
[242] 17 C.F.R. §166.3.

minimum level required by Regulation 1.17(a)(1).[243] Regulation 1.12(b) requires a FCM to notify the Commission and the NFA in writing within five days of the FCM's finding that its adjusted net capital has fallen below the early warning levels.[244] USSFC's adjusted net capital fell below the "early warning" level on July 31, 1997 and remained below the "early warning" level for the entire period from July 31, 1997 to September 5, 1997. By failing to provide written notice to the Commission within five days of July 31, 1997, USSFC violated the notice requirements of Regulation 1.12(b)[245], and Hing is thereby liable as a controlling person[246] of USSFC.

Under Regulation 1.12(g), an FCM is also required to provide written notice to the Commission within two business days when there has been a reduction of net capital of 20% or more compared to its last reported net capital.[247] USSFC failed to file the required notice with the Commission on at least three separate occasions. As of December 31, 1999, September 30, 1999 and January 31, 2000, USSFC had a reduction in net capital of 20% or more compared to its previously reported net capital. USSFC did not file the required notices with the Commission and therefore, violated Regulation 1.12(g)[248], and Hing is thereby liable as a controlling person.[249]

Respondent Gong

Thomas Gong headed the compliance function at USSFC. Hing testified that he was not concerned about Gong's lack of experience in compliance because he thought Gong was a "fast

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[243] 17 C.F.R. §1.12; 17 C.F.R. §1.17.
[244] 17 C.F.R. §1.17; (i.e., adjusted net capital is less than the greater of (1) 150% of required adjusted net capital or (2) 6% of customer funds required to be held in segregated accounts.
[245] *Id.*
[246] 7 U.S.C. §13c(b).
[247] 17 C.F.R. §1.12(g).
[248] *Id.*
[249] 7 U.S.C. §13c(b).

learner" and intelligent enough to do the job competently.[250] Gong approached his new job responsibilities with innovation and originality. He proved himself to be a true self-starter on the job. For instance, Gong created the compliance manual for USSFC in only a couple of months[251] even though he had virtually no prior experience in compliance. Gong's efforts to implement a procedure for handling an omnibus account that had several subaccounts were also similarly astounding. To establish a procedure for dealing with such an account, Gong called a couple of brokerage firms in order to survey their procedures for handling omnibus accounts with subaccounts, and did nothing else.[252]

Although Gong was a fast learner and was very intelligent, he regrettably applied his skills sparingly as a compliance officer, adopting instead a casual approach as opposed to one of diligence to the compliance function. As part of his supervisory duties, Gong conducted "sporadic" reviews of the order tickets. Gong allegedly reviewed the office order tickets of the International Division between one and ten times during 1997.[253] After supposedly reviewing thousands of order tickets for the CCB account, Gong never raised any concerns about the fact that CCB order tickets were missing the required five-digit numbers. Gong's failure to detect the CCB fraud is unbelievable given the overwhelming evidence of fraud. Rather than inquire about the missing account numbers, Gong chose to ignore the omissions, thus allowing CCB to perpetrate a massive fraud upon its customers.

Gong's handling of customer inquiries and complaints was also similarly inadequate. Instead of diligently performing his supervisory responsibilities, Gong improperly delegated compliance duties of the International Division to White. USSFC received at least three

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[250] Tr. at 654:17-24.
[251] Tr. at 509:7-18.
[252] Tr. at 535:15-537:16; 548:12-551:12.
[253] *Id.*

complaints from CCB customers but never addressed them. Gong testified that he never received these complaints despite USSFC's policy requiring that all customer complaints be forwarded to Gong.[254] Such instances further support the conclusion that Gong failed to supervise USSFC employees to ensure that USSFC employees were complying with Commission rules and USSFC's compliance manual in violation of Regulation 166.3.[255]

Respondent Wu

Prior to joining USSFC as CFO, Jiping Wu had never worked as a CFO and had no experience in back office operations of an FCM.[256] Unfortunately, Wu proved to be as equally inept as Gong was in performing his job responsibilities. As USSFC's CFO, one of Wu's responsibilities was to make and maintain a record of USSFC's formal computations of its adjusted net capital and of its minimum financial requirements.[257] Wu also prepared reports containing information necessary to assess USSFC's early warning level and a 20% reduction in net capital.[258] Thus, Wu knew when USSFC's adjusted net capital fell below the minimum levels and when a 20% reduction in net capital occurred. Wu was responsible for filing such notices with the Commission.

Aiding and abetting liability is discussed above under the Court's evaluation of Bellassai's liability for aiding and abetting CCB's violations of §§4b(a)(i) and (iii). Though the Commission has held that aiding and abetting liability requires "knowing participation," passive conduct (i.e., inaction), may be a form of "intentional assistance."[259] Wu knowingly intended to

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[254] Tr. at 570:25-571:573:24.
[255] 17 C.F.R. §166.3.
[256] Tr. at 633:5-634:4.
[257] Ex. 409, Stipulations (7/30/02) "Facts Relating to Accounting Issues" at ¶5.
[258] *Id.* at ¶¶ 1-2; Ex. 440A, "Net Capital Calculation" Bates No. 2006-030-003166 through 2006-030-003169.
[259] *In re Western Fin. Management*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,814 at 31,401 (CFTC Nov. 14, 1985) *citing Securities & Exchange Comm. v. Coffey*, 493 F.2d 1304, 1317 (6th Cir. 1974).

aid USSFC's violations of Regulation 1.12[260] because Wu knew that when USSFC's adjusted net capital fell below minimum levels and when a 20% reduction in net capital had occurred USSFC was required to provide written notices to the Commission. Wu failed, nonetheless, to file the necessary notices with Commission. Accordingly, Wu's omissions aided and abetted[261] USSFC's violations of Regulation 1.12.[262]

The Division also charged Wu with violating Commission Regulation 166.3[263] for failure to supervise USSFC employees to ensure that USSFC was in compliance with the Act and Commission Rules. However, apart from adding Wu's name to the list of respondents responsible for violating Regulation 166.3 for failure to supervise, the Division did not offer any evidence to support its claim against Wu. The Division's direct examination of Wu was equally unpersuasive. Due to the lack of evidence offered in support of the Division's claim, Wu is held not liable for a violation of Regulation 166.3.

Respondent USSFC

USSFC is vicariously liable for violations of §§4b(a)(i)(iii)[264] committed by Bellassai and Hing because they were acting within the scope of their employment with USSFC pursuant to Regulation 1.2[265]. Under Regulation 1.2 the actions or omissions of any official, agent, or other person acting for the principal within the scope of his employment shall be attributed to the principal.[266] Bellassai's violations of §§4b(a)(i)(iii) occurred while she was acting in her capacity as a supervisor of the International Division at USSFC. Hing's violations of

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[260] 17 C.F.R. 1.12.
[261] 7 U.S.C. §13c(a).
[262] 17 C.F.R. 1.12.
[263] 17 C.F.R. 166.3.
[264] 7 U.S.C. §6b(a)(i)(iii).
[265] 7 U.S.C. 4; Although the Division also cited §2(a)(1)(A)(iii) of the Act instead of §2(a)(1)(B) of the Act as the statutory authority for establishing vicarious liability, the error is deemed harmless and the Court shall consider the Division's claim for vicarious liability under Commission regulation 1.2.

§§4b(a)(i)(iii) as a controlling person of USSFC occurred while he was acting in his capacity as a registered principal, President, CEO and Vice-Chairman of the Board of USSFC. Thus, USSFC is vicariously liable[267] for violations of §§4b(a)(i)(iii)[268] committed by their employees while acting within the scope of their employment with USSFC.

USSFC is vicariously liable for Bellassai, Hing and Gong's failure to supervise USSFC's employees in violation of Regulation 166.3[269] pursuant to Regulation 1.2.[270] The weight of evidence establishes that USSFC's compliance system was flawed by poor design and an overall lack of diligence on the part of those entrusted with supervisory duties. The systematic oversights of the compliance function allowed USSFC to play a key role in the CCB allocation fraud.

The Commission has interpreted §2(a)(1)(B) of the Act[271] to be complementary to Section 166.3 of the regulations, imposing strict liability on principals for their agents' failure to supervise. The Commission has accordingly stated its concurrence with the 7th Circuit in stating that activities "in furtherance of and agency relationship covered by §2(a)(1)(B) would be those relating to the principal's "business as a Commission registrant."[272] The strict liability imposed by §2(a)(1)(B) is intended to encourage principals to "investigate the character and ability of agents before they are retained and to provide supervision for those activities likely to result in liability."[273] The evidence demonstrates that USSFC did not hire ethical and diligent employees.

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[266] *Id.*; Under the traditional common law doctrine of *respondeat superior*, actions of agents are imputed to principals.
[267] 17 C.F.R. 1.2.
[268] 7 U.S.C. §6b(a)(i)(iii).
[269] 17 C.F.R. 166.3.
[270] 17 C.F.R. 1.2.
[271] Both Section 2(a)(1)(B) of the Act and Commission regulation 1.2 provide for liability of the principal for acts of the agent. Thus, Commission regulation 1.2 shall be considered analogous to Section 2(a)(1)(B) of the Act for the purposes of this discussion.
[272] *See Lobb* at 36,441 *citing Rosenthal & Co. v. C.F.T.C.*, 802 F.2d 963, 966 (7th Cir. 1986).
[273] *Id. citing Anspacher & Assoc., Inc. v. Henderson*, 854 F.2d 941, 945 (7th Cir. 1988).

Bellassai's violations of Regulation 166.3[274] occurred while she was acting in her capacity as a Commission registrant and supervisor of the International Division at USSFC. Hing's violations of Regulation 166.3 also occurred while he was acting in his capacity as a Commission registrant, President, CEO and Vice-Chairman of the Board of USSFC. Finally, Gong's violations of Regulation 166.3 occurred while he was acting in his capacity as a Commission registrant and Vice-President of the Compliance Department for USSFC. USSFC is, accordingly, vicariously liable[275] for violations of Regulation 166.3[276] committed by their employees while acting within the scope of their employment.

As discussed above under Hing's and Wu's liabilities, USSFC violated Regulation 1.12(b)[277] by failing to provide written notice to the Commission within five days that USSFC's adjusted net capital fell below the "early warning" threshold. USSFC also failed to file the required notice when there was a reduction of its net capital of 20% or more compared to its last reported net capital in violation of Regulation 1.12(g).[278]

Form 8-T

The Division charged Gong, Hing and USSFC with violating §6(c) of the Act. Section 6(c) of the Act states that sanctions may be imposed against anyone who willfully makes materially false and misleading statements or omissions of a material fact in a report filed with the Commission.[279] "Willfulness" is defined as acting intentionally or with reckless disregard of regulatory obligations. [280]

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[274] 17 C.F.R. 166.3.
[275] 17 C.F.R. 1.2.
[276] 17 C.F.R. 166.3.
[277] 17 C.F.R. 1.12(b).
[278] 17 C.F.R. 1.12(g).
[279] 7 U.S.C. §9.
[280] *CFTC v. Sidoti*, 178 F.3d 1132, 1137 (11th Cir. 1999) *aff'd sub nom., CFTC v. Trinity Fin. Group*, 2001 U.S. App. LEXIS 29165 (2001).

The conduct of the aforementioned respondents did not amount to willfulness. With respect to the filing of Turoczi's Form 8-T, it is unclear whether USSFC actually had the opportunity to conduct an internal investigation to verify the customer complaint at issue because Turoczi left USSFC and could not be located shortly after the customer filed the complaint. Thus, Gong's responses in the negative to questions on the Form 8-T for Turoczi inquiring whether he had violated commodities laws or had been the subject of any material complaint or internal investigation were reasonable and not a willful attempt to evade regulatory obligations. Further, Gong's statement on the Form 8-T that Turoczi had left voluntarily was not definitively false either because as noted above, Turoczi left shortly after the customer filed a complaint and testimony adduced at trial did not clear up the cloud of doubt concerning this issue.

With respect to the Form 8-T for Chippas, Gong attached a letter stating that USSFC was conducting an investigation of unauthorized trading by Chippas to the Form 8-T though he did not report on the Form 8-T that Chippas was in fact the subject of any material complaint by a customer or any internal investigation. The omission seemed more of a careless oversight on Gong's part, rather than a willful or reckless disregard for regulatory obligations.[281]

Count Four of the Complaint charging Gong, Hing and USSFC with filing a false report with the Commission in violation of §6(c) of the Act is accordingly dismissed.

CONCLUSIONS OF LAW

Based upon the findings of facts set forth above, the Court concludes that:

Respondent Bellassai

1. Bellassai violated §§4b(a)(i) and (iii) of the Act[282] in that she willfully defrauded CCB customers by knowingly participating in CCB's fraudulent allocation scheme.

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[281] As previously noted, carelessness is one of Gong's most salient attributes.
[282] 7 U.S.C. §6b(a)(i)(iii).

2. Bellassai willfully aided and abetted CCB's violations of §§4b(a)(i) and (iii) of the Act[283] and is therefore liable as a principal pursuant to 13(a) of the Act.[284]

3. Bellassai willfully aided and abetted Justus' violations of §§4b(a)(i) and (iii)[285] of the Act and is therefore liable as a principal pursuant to §13(a).[286]

4. Bellassai acted as an unregistered CTA in violation of §4m of the Act[287] in that she received compensation in exchange for recommending trades for at least 58 CCB accounts.

5. Bellassai violated §4o(1)(A) of the Act[288] in that she was a CTA who knowingly used the mails or other instrumentalities of interstate commerce to help CCB perpetuate a fraud upon its customers.

6. Bellassai violated §4o(1)(B) of the Act[289] in that she was a CTA who used the mails or other instrumentalities of interstate commerce to engage in a course of business, which operated as a fraud or deceit upon her clients.

7. Bellassai violated Commission regulation 166.3[290] by failing to diligently supervise the International Division's order desk personnel.

Respondent Reynolds

8. Reynolds is liable for Justus' violations of §§4a(b)(i)(iii) of the Act[291] as a controlling person pursuant to §13(b)[292] in that he knowingly directed Justus to participate in CCB's fraudulent allocation scheme.

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[283] *Id.*
[284] 7 U.S.C. §13c(a).
[285] 7 U.S.C. §§6b(a)(i)(iii).
[286] 7 U.S.C. §13c(a).
[287] 7 U.S.C. §6m.
[288] 7 U.S.C. §6o.
[289] *Id.*
[290] 17 C.F.R. 166.3.
[291] 7 U.S.C. §6b(a)(i)(iii).
[292] 7 U.S.C. §13c(b).

9. Reynolds acted as an unregistered CTA in violation of §4m of the Act[293] in that he received compensation in exchange for recommending trades for at least 167 CCB customer accounts.

10. Reynolds is liable, as a controlling person pursuant to §13(b),[294] for Justus' violation of 4o(1)(A) of the Act[295] in that he knowingly caused Justus, a CTA, to use the mails or other instrumentalities of interstate commerce to place unauthorized trades for CCB customers in furtherance of the CCB fraudulent allocation scheme.

11. Reynolds is liable, as a controlling person pursuant to §13(b),[296] for Justus' violation of 4o(1)(B) of the Act[297] in that he knowingly caused Justus, a CTA, to use the mails or other instrumentalities of interstate commerce to engage in a course of business, which operated as a fraud or deceit upon its clients.

Respondent Hing

12. Hing is liable, as a controlling person pursuant to §13(b),[298] for USSFC's violations of §§4b(a)(i) and (iii) of the Act[299] in that USSFC's active participation helped to facilitate the CCB allocation fraud.

13. Hing violated Commission regulation 166.3[300] in that he failed to diligently supervise USSFC's employees and operations to ensure that its practices and procedures were in compliance with the Act and Commission regulations.

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[293] 7 U.S.C. §6m.
[294] 7 U.S.C. §13c(b).
[295] 7 U.S.C. §6o.
[296] 7 U.S.C. §13c(b).
[297] 7 U.S.C. §6o.
[298] 7 U.S.C. §13c(b).
[299] 7 U.S.C. §§6b(a)(i)(iii).
[300] 17 C.F.R. §166.3.

14. Hing is liable, as a controlling person pursuant to §13(b),[301] for USSFC's violation of Commission regulation §1.12(b)[302] in that USSFC failed to notify the Commission that its adjusted net capital fell below the early warning level.

15. Hing is liable, as a controlling person pursuant to §13(b),[303] for USSFC's violation of Commission regulation §1.12(g)[304] in that USSFC failed to notify the Commission of a reduction in capital of 20% or more compared to its previously reported net capital.

16. Inasmuch as Gong did not violate §6(c) of the Act,[305] Hing is not liable, as a controlling person pursuant to §13(b)[306], for a violation of §6(c).

Respondent Gong

17. Gong violated Commission regulation 166.3[307] in that he failed to diligently perform his compliance responsibilities and supervise USSFC employees to ensure that USSFC practices and procedures were in compliance with the Act and Commission Regulations.

18. Gong did not violate §6(c) of the Act[308] in that the evidence does not establish that Gong willfully made false statements in Form 8-Ts filed with the Commission.

Respondent Wu

19. Wu is liable for aiding and abetting USSFC's failure to notify the Commission that its adjusted net capital fell below the early warning level in violation of Commission regulation 1.12(b).[309]

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[301] 7 U.S.C. §13c(b).
[302] 17 C.F.R. §1.12(b).
[303] 7 U.S.C. §13c(b).
[304] 17 C.F.R. §1.12(g).
[305] 7 U.S.C. §9.
[306] 7 U.S.C. §13c(b).
[307] 17 C.F.R. §166.3.
[308] 7 U.S.C. §9.
[309] 17 C.F.R. §1.12(b).

20. Wu is liable for aiding and abetting USSFC's failure to notify the Commission of a reduction in capital of 20% or more compared to its previously reported net capital in violation of Commission regulation 1.12(g).[310]

21. Wu is not liable for a violation of Commission regulation 166.3,[311] given the lack of evidence in support of the Division's claim.

Respondent USSFC

22. USSFC is vicariously liable, pursuant to Commission regulation 1.2,[312] for violations of §§4b(a)(i)(iii) of the Act[313] committed by Bellassai and Hing because they were acting within the scope of their employment with USSFC.

23. USSFC is vicariously liable, pursuant to Commission regulation 1.2,[314] for Bellassai's, Hing's and Gong's failure to diligently supervise USSFC employees to ensure that USSFC practices and procedures were in compliance with the Act and Commission Regulations in violation of Commission regulation 166.3.[315]

24. USSFC violated Commission regulation 1.12(g)[316] in that it failed to notify the Commission of a reduction in capital of 20% or more compared to its previously reported net capital.

25. USSFC violated Commission regulation 1.12(b)[317] in that it failed to notify the Commission that its adjusted net capital fell below the early warning level.

26. Inasmuch as Gong did not violate §6(c) of the Act,[318] USSFC is not vicariously liable for a violation of §6(c).

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[310] 17 C.F.R. §1.12(g).
[311] 17 C.F.R. §166.3.
[312] 17 C.F.R. §1.2.
[313] 7 U.S.C. §§6b(a)(i)(iii).
[314] 17 C.F.R. §1.2.
[315] 17 C.F.R. §166.3.
[316] 17 C.F.R. §1.12(g).

Respondent Justus

27. Justus is liable for violations of §§4a(b)(i)(iii) of the Act[319] in that it participated in a scheme to defraud CCB customers.

28. Justus acted as an unregistered CTA in violation of §4m of the Act[320] in that it received compensation in exchange for recommending trades for more than 15 CCB customer accounts.

29. Justus is liable for violations of 4o(1)(A) of the Act[321] in that it was a CTA who used the mails or other instrumentalities of interstate commerce to place unauthorized trades for CCB customers in furtherance of the CCB fraudulent allocation scheme.

30. Justus is liable for violations of 4o(1)(B) of the Act[322] in that it was a CTA who used the mails or other instrumentalities of interstate commerce to engage in a course of business, which operated as a fraud or deceit upon its clients.

SANCTIONS

The Division has proven by a preponderance of the evidence that Respondents violated the Act and implementing Regulations by engaging in a scheme to unlawfully allocate executed trades to customer accounts. In large measure the Division was successful in proving its case by reason of Regulation 1.35, a rule promulgated in the early 1970s by the predecessor of this agency. That rule required a written record of all customer orders, including customer identification, order number, and time stamps showing time of receipt, transmission to the floor, and execution. The newly revised Regulation 1.35 now permits, with customer consent, the

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[317] 17 C.F.R. §1.12(b).
[318] 7 U.S.C. §9.
[319] 7 U.S.C. §6b(a)(i)(iii).
[320] 7 U.S.C. §6m.
[321] 7 U.S.C. §6o.
[322] 7 U.S.C. §6o.

bunching of orders by an eligible account manager, with post-execution allocation of trades. The new rule reduces transparency by eliminating the audit trail of a specific customer's order prior to the ex-pit allocation. The new rule also relieves FCMs of any responsibility for ensuring fairness of allocation and instead imposes this duty on account managers. Thus, had the events at issue occurred after June 11, 2003, the date the modifications were promulgated, the case at bar would take on a very different hue.

Cease & Desist Order

The Division requested that cease and desist orders be entered against USSFC, Hing, Gong, Wu, Bellassai, Justus and Reynolds. Section 6(d) of the Act provides that, a respondent who violates any of the provisions of the Act or Commission regulations may be directed to cease and desist from engaging in any further violations.[323] The Commission has steadfastly held that the imposition of a cease and desist order is appropriate where the wrongful conduct was repeated in the past and is likely to be repeated in the future.[324]

Given the fact that the fraudulent allocation scheme occurred continuously over a period of several years, an entry of a cease and desist order against respondents USSFC, Hing, Gong, Wu, Bellassai, Justus and Reynolds is an appropriate sanction. The CCB allocation scheme probably would have continued to this very day had it not been for Fasch's arrest and the demise of CCB in Germany. During testimony Hing, Gong and Wu never stated that they changed or were planning to change USSFC's procedures and practices in order to improve the compliance function after the CCB allocation scheme came to light. Gong even testified that he did not change the procedure to review monthly account statements in order to detect fraudulent

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[323] 7 U.S.C. §13(b).

[324] *In the Matter of First Financial Trading, Inc.*, [2000-2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶29,089 at 53,690 (C.F.T.C. Jul. 8, 2002); *See also In re Gordon*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,667 at 40,181 (C.F.T.C. Feb. 25, 1993).

activities similar to CCB's transactions.[325] As the evidence also established, the fraud at issue did not arise from an isolated incident. Bellassai and Reynolds routinely committed violations of the Act and Regulations over a period of several years and would not have willingly stopped, thus making it very likely that if the opportunity were to present itself in the future, the two would continue defrauding customers for their personal gain. Additionally, as Justus has been deemed in default, a cease and desist order against it is appropriate as well.

Revocation of Registration

The Division requested a revocation of registration against USSFC, Bellassai, Hing, Gong, Wu and Reynolds. Section 6(c)(2) authorizes the Commission to revoke the registration of respondents who have violated any provision of the Act or Commission rules. A demonstration of an "inability to deal fairly with the public and consistent with just and equitable principles of trade" may give cause for the revocation of registration.[326] The weight of evidence clearly shows that Bellassai and Reynolds willfully participated in the CCB allocation scheme, thereby establishing their "inability to deal fairly with the public." Hing and Gong were as equally culpable given their willful ignorance of the CCB allocation fraud and the fact they had a duty to supervise USSFC employees to prevent such fraudulent activities and that it was within their power to bring it to an end. However, being that Wu has only been found liable of violating Regulations 1.12(b) and (g), the gravity of his violations does not justify a revocation of his registration. Accordingly, revocation of registration shall only apply to Reynolds, Bellassai, USSFC, Gong and Hing.

[325] Tr. at 785:14-20; 786:10-25.
[326] 17 C.F.R. pt. 3, app. A.

Trading Prohibition

The Division requested a permanent trading prohibition against USSFC, Bellassai, Reynolds and Justus. Section 6(c) provides that the Commission may prohibit a respondent who has violated any provisions of the Act or Regulations from trading on contract markets.[327] "Trading prohibitions are appropriate when a nexus connects a respondent's violations to the integrity of the futures market."[328] The threat need not influence futures and option prices, but is sufficient when the "conduct erodes 'public perception, protection, and confidence in [the] markets.'"[329] Bellassai's, Reynolds', USSFC's and Justus' participation in the CCB allocation scheme enabled CCB to defraud hundreds of customers. It goes without saying that such deceitful conduct can only work to "erode confidence in the markets." Customer fraud is also considered to be "among the most serious violations for purposes of initially determining the severity of sanctions to be imposed under the Act."[330] Given the gravity of the violations, trading bans against the aforementioned respondents are warranted.

In determining the duration of trading bans the Commission has consistently held that it should correlate with the gravity of the violation.[331] Factors to evaluate when considering the length of trading bans are: "(1) the relationship of the violation at issue to the regulatory purposes of the Act; (2) respondent's state of mind; (3) the consequences flowing from the violative conduct; and (4) respondent's post-violation conduct."[332] Any mitigating or

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[327] 7 U.S.C. §9.
[328] *First Financial* at 53,694 *citing In re Incomco*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,198 at 38,537 (CFTC Dec. 30, 1991).
[329] *Id.*at 53,694 *citing In the Matter of Miller*, [Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,440 at 42,914 (CFTC Jun. 16, 1995).
[330] *In the Matter of Grossfeld*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,921 at 44,468 (CFTC Dec. 10, 1996).
[331] *First Financial* at 53,695.
[332] *R&W Technical Services, Ltd.*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,582 at 47,748 (CFTC Mar. 16, 1999) *citing Grossfeld* at 44,467-68.

aggravating circumstances are considered as well.[333] As previously noted, customer fraud is one of the most serious violations of the Act and is thought to "go to the core provisions of the Act."[334] The facts also show that Bellassai, Reynolds, USSFC and Justus possessed a guilty knowledge of the CCB allocation scheme and actively participated in it, which resulted in substantial losses to hundreds of CCB customers. Additionally, Bellassai's and Reynolds' dishonesty during testimony and attempts to wash their hands of any responsibility for their role in the CCB allocation fraud further justifies the imposition of a trading ban. Given the circumstances in light of the aforementioned factors, a trading ban of ten years is appropriate for Bellassai, Reynolds, USSFC and Justus.

Civil Monetary Penalty

Section 6(c) permits the assessment of a civil monetary penalty against any respondent who violates the Act or Regulations.[335] Section 6(e)(1) states that in determining the amount of monetary penalty the appropriateness of the penalty to the gravity of the violation must be weighed.[336] Section 6(c) further provides that the penalty may not be more than the higher of $100,000, or triple the monetary gain to such person for such violation.[337] In assessing such penalty the Commission shall consider "the appropriateness of such penalty to the gravity of the violation."[338] Although sanctions, including civil monetary penalties, are levied against those who violate the Act to discourage the offender from repeating the wrongs, and to deter others from engaging in such unlawful activity, the sanctions in the instant case will have a diminished

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[333] *Id.*
[334] *Id.*
[335] 7 U.S.C. §9.
[336] 7 U.S.C. §9a.
[337] *Id.*
[338] *Id.*

deterrence value due to the recent changes to Regulation 1.35. Thus, the rule changes present a mitigating factor warranting a reduction of the civil monetary penalties.

ORDER

USSFC is ordered to **CEASE AND DESIST** from violations of Sections 4b(a)(i)(iii) of the Act and Regulations 1.12(b)(g) and 166.3.

Hing is ordered to **CEASE AND DESIST** from violations of Sections 4b(a)(i)(iii) and of the Act and Regulations 1.12(b)(g) and 166.3.

Gong is ordered to **CEASE AND DESIST** from violations of Regulation 166.3.

Wu is ordered to **CEASE AND DESIST** from violations of Regulations 1.12(b)(g).

Justus is ordered to **CEASE AND DESIST** from violations of Sections 4b(a)(i)(iii), 4m, and 4o(1)(A)(B) of the Act.

Bellassai is ordered to **CEASE AND DESIST** from violations of Sections 4b(a)(i)(iii), 4m, and 4o(1)(A)(B) of the Act and Regulation 166.3.

Reynolds is ordered to **CEASE AND DESIST** from violations of 4b(a)(i)(iii), 4m, and 4o(1)(A)(B) of the Act.

The **REGISTRATIONS** of USSFC, Reynolds, Bellassai, Gong and Hing are hereby **REVOKED**.

USSFC, Reynolds, Bellassai and Justus are **PROHIBITED**, directly or indirectly, from **TRADING** on or subject to the rules of any contract market, either for their own account or for the account of any persons, interest or equity for a period of **TEN (10) YEARS**, and all contract markets are **DIRECTED TO REFUSE** USSFC, Reynolds, Bellassai and Justus any trading privileges for a period of **TEN (10) YEARS**.

USSFC is ordered to **PAY** a civil monetary penalty of **$2,052,680**.

Hing is ordered to **PAY** a civil monetary penalty of **$220,000.**

Gong is ordered to **PAY** a civil monetary penalty of **$110,000.**

Wu is ordered to **PAY** a civil monetary penalty of **$50,000**.

Justus is ordered to **PAY** a civil monetary penalty of **$919,174**.

Bellassai is ordered to **PAY** a civil monetary penalty of **$440,000**.

Reynolds is ordered to **PAY** a civil monetary penalty of **$500,000**.

Count Four of the Complaint charging Gong, Hing and USSFC with filing a false report with the Commission in violation of §6(c) of the Act is **DISMISSED**.

Count Six of the Complaint as to Respondent Wu for failure to supervise in violation of Regulation 166.3 is **DISMISSED**.

The sanctions set forth above shall become effective the date this decision becomes final.

IT IS SO ORDERED.

On this 25th day of July 2003,

George H. Painter
Administrative Law Judge

Leah Vu, Law Clerk