

BEFORE THE BUSINESS CONDUCT COMMITTEE
OF THE
CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

)	
In the Matter of:)	
)	
First Marathon America, Inc.)	
101 Hudson Street)	
Suite 3715)	
Jersey City, NJ 07302)	
)	
and)	File No. 97-0045
)	
Stephen Castellano)	
101 Hudson Street)	
Suite 3715)	
Jersey City, NJ 07302)	
)	
Respondents.)	
)	

DECISION ACCEPTING OFFER OF SETTLEMENT

This proceeding was instituted by the Business Conduct Committee (the "Committee") of the Chicago Board Options Exchange, Incorporated (the "Exchange") as a result of an investigation by the staff of the Exchange, which indicated that there was probable cause for finding a violation within the disciplinary jurisdiction of the Exchange. In accordance with that determination, the Committee directed the issuance of a Statement of Charges ("Statement of Charges"). Pursuant to Exchange Rule 17.8, the respondents ("Respondents"), First Marathon America, Inc. ("FMAI") and Stephen Castellano ("Castellano"), submitted an offer of settlement ("Offer of Settlement").

In submitting the Offer of Settlement, the Respondents neither admitted nor denied the violations alleged in the Statement of Charges.

The Respondents have agreed that the determination of the Committee to accept the Offer of Settlement shall constitute a final Decision, and, as provided in Exchange Rule 17.8, the Respondents may not seek review thereof.

The Respondents understand and acknowledge that the Committee's decision in this matter will become part of their disciplinary record and may be considered in any future Exchange proceeding.

With due regard to the particulars of this matter, the Committee believes it is appropriate to accept the Respondents' Offer of Settlement based on the following stipulated facts and findings and thereby to impose the sanction specified below.

FACTS

1. The Respondent, FMAI, became a member of the Exchange in or about September 1993.
2. Commencing in or about September 1993, FMAI was a member organization registered with the Exchange to transact business on the Exchange as an organization associated with a market-maker, floor broker, and lessee.
3. During all relevant periods herein, the Respondent, Castellano, was an Associated Person¹ of FMAI. In addition, commencing in or about June 1993, Castellano was the president and a director of FMAI.
4. In or about January 1993, Marathon Arbitrage CV ("MACV") became a registered broker-dealer and a member of the National Association of Securities Dealers ("NASD"), and thereafter became a customer of FMAI. During all relevant periods herein, FMAI owned a controlling interest in MACV.
5. In or about January 1993, Options Strategy CV ("OSCV") became a registered broker-dealer and a member of the NASD, and thereafter became a customer of FMAI.
6. During all relevant periods herein, Spear, Leeds and Kellogg, Inc. ("SLK") was registered with the Exchange to transact business on the Exchange as a member organization associated with a market-maker and a floor broker, as a member organization authorized to conduct a non-member customer business, as a lessor member, and as an Options Clearing Corporation ("OCC") Clearing Member.
7. During all relevant periods herein, Exchange Rules 4.1 - Just and Equitable Principles of Trade, 4.2 - Adherence to Law, 4.6 - False Statements, 4.11 - Position Limits, 6.24(a) - Orders Required to Be in Written Form, 6.49(a) - Transactions Off the Exchange, 6.51(d) - Reporting Duties, and 24.4(a) - Position Limits for Broad-Based Index Options were in full force and effect.
8. During all relevant periods herein, the applicable position limit in the Standard & Poor's 100 Stock Index (OEX) class of option contracts was 25,000 contracts, with no more than 15,000 contracts in the near-term series, on the same side of the market.
9. Prior to November 6, 1992, FMAI requested that the Exchange grant non-aggregation status for position and exercise limit purposes between the option trading accounts of FMAI and OSCV, and the option trading accounts MACV and OSCV. In support of its request, FMAI in substance represented to the Exchange that FMAI would not exercise control over the trading account of OSCV.
10. On or about November 6, 1992, the Exchange granted non-aggregation status for position limit and exercise limit purposes between the option trading accounts of FMAI and OSCV, and the option trading accounts MACV and OSCV, based on representations made to the Exchange by FMAI described in Paragraph 9 above.

¹ Person associated with a broker or dealer as defined in the Securities Exchange Act of 1934, as amended, Section 3(a)(18).

11. During the approximate period of 1993 through 1996, FMAI exercised control over the option trading account of OSCV.
12. During the approximate period of 1993 through 1996, including the periods from on or about July 11, 1994 through on or about July 25, 1994, from on or about July 6, 1995 through on or about July 20, 1995, and from on or about July 3, 1996 through on or about July 18, 1996, FMAI and Castellano, on behalf of FMAI, controlled in the combination of FMAI's, MACV's, and OSCV's accounts, an aggregate long call, short put position in excess of the 25,000 contract limit in the OEX class of option contracts.
13. During the approximate period from on or about September 1, 1993 through on or about July 22, 1996, FMAI clerks on the Exchange trading floor marked numerous telephone orders as "closing" orders although such orders were "opening" orders, and failed to mark numerous orders with a "B" designation when the orders were for a customer range account of a broker-dealer.
14. During the approximate period from on or about September 1, 1993 through on or about July 22, 1996, FMAI failed to maintain and implement adequate procedures for the proper handling by its clerks of telephone orders initiated from off of the Exchange trading floor.
15. During the period from on or about November 30, 1995 through on or about December 17, 1996, FMAI and Castellano, on behalf of FMAI, engaged in a course of conduct that caused SLK to submit approximately 84 position adjustments to OCC which moved positions which totaled at least 20,321 option contracts between FMAI's account and MACV's account. As a result of this conduct, at least 11 of these position adjustments resulted in the netting of positions by way of adjustments in FMAI's account and MACV's account, and not by way of transactions effected on the Exchange trading floor.

FINDINGS

16. The acts, practices, and conduct described in Paragraphs 9 through 11 above constitute violations of Exchange Rules 4.1 and 4.6 by FMAI, in that FMAI made false statements to the Exchange when, in order to secure non-aggregation status for position limit and exercise limit purposes between the option trading accounts of FMAI and OSCV, and the option trading accounts MACV and OSCV, it represented to the Exchange that FMAI would not exercise control over the trading account of OSCV. In fact, FMAI did exercise control over the option trading account of OSCV.
17. The acts, practices, and conduct described in Paragraph 12 above constitute violations of Exchange Rules 4.11 and 24.4(a) by FMAI and Castellano, in that FMAI and Castellano, on behalf of FMAI, controlled in the combination FMAI's, MACV's, and OSCV's accounts, an aggregate long call, short put position in excess of the 25,000 contract limit in the OEX option class.
18. The acts, practices, and conduct described in Paragraph 13 above constitute violations of Exchange Rules 6.24(a) and 6.51(d) by FMAI, in that FMAI's clerks on the Exchange trading floor marked numerous telephone orders as "closing" orders although such orders

- were “opening” orders, and did not mark numerous orders with a “B” designation when the orders were for a customer range account of a broker-dealer.
19. The acts, practices, and conduct described in Paragraph 14 above constitute violations of Exchange Rule 4.2 by FMAI, in that FMAI failed to maintain and implement adequate procedures for the proper handling by its clerks of telephone orders initiated from off of the Exchange trading floor.
20. The acts, practices, and conduct described in Paragraph 15 above constitute violations of Exchange Rules 4.6 and 6.49(a) by FMAI and Castellano, in that FMAI and Castellano, on behalf of FMAI, engaged in a course of conduct that caused SLK to submit approximately 84 position adjustments to OCC which moved positions which totaled at least 20,321 option contracts between FMAI’s account and MACV’s account. As a result of this conduct, at least 11 of these position adjustments resulted in the netting of positions by way of adjustments in FMAI’s account and MACV’s account, and not by way of transactions effected on the Exchange trading floor.

SANCTION

The sanction to be imposed shall consist of a seventy-five thousand dollar (\$75,000) joint and several fine and a censure of each Respondent.

ORDER

ACCORDINGLY IT IS ORDERED THAT, the Respondents, First Marathon America, Inc. and Stephen Castellano, shall be and hereby are censured and jointly and severally fined in the amount of seventy-five thousand dollars (\$75,000).

**SO ORDERED
FOR THE COMMITTEE**

Dated: November 12, 1997

**By: /s/ Bruce I. Andrews
Bruce I. Andrews
Chairman
Business Conduct Committee**