UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of: **Norman Eisler** 4 Pine Brook Drive White Plains, New York 10605 **and** **First West Trading, Inc.** 4 Pine Brook Drive White Plains, New York 10605 **Respondents.**	**CFTC Docket No. 01-14** **COMPLAINT AND NOTICE OF HEARING PURSUANT TO SECTIONS 6(c), 6(d), 8a(3) AND 8a(4) OF THE COMMODITY EXCHANGE ACT, AS AMENDED**

The Commodity Futures Trading Commission ("Commission") has received information from its staff which tends to show, and the Commission's Division of Enforcement ("Division") alleges that:

I. SUMMARY

1. From at least August 1999 to May 12, 2000, Norman Eisler ("Eisler") and First West Trading, Inc. ("First West") manipulated the settlement prices of options on the PSE Technology Index ("P-Tech") futures contract to the benefit of First West's account.

2. As a result of the artificial settlement prices, the First West trading account's margin requirements were reduced significantly. On a typical day between August 2, 1999 and May 12, 2000, the value of the First West account, for margin purposes, was overstated by over

$2 million. By May 15, 2000, the value of First West's account was overstated by as much as $5 million.

II. RESPONDENTS

3. **Norman Eisler,** 4 Pine Brook Drive, White Plains, New York 10605, has been registered with the Commission as a floor broker since April 1993. At all relevant times hereto, he was the Chairman and a member of the New York Futures Exchange, Inc. ("NYFE"). On or about May 15, 2000, Eisler resigned his membership on NYFE.

4. **First West Trading, Inc.** was a New York corporation owned jointly by Eisler and Rita Weinberg-Eisler. Its principal place of business was located at 4 Pine Brook Drive, White Plains, New York 10605. At all times relevant hereto, Eisler was an agent of First West.

III. FACTS

5. Unless otherwise specified, the time period for this complaint is from August 1, 1999 through May 12, 2000.

a. The P-Tech Market

6. Beginning in or about April 1996, the NYFE opened trading in the P-Tech Futures and P-Tech Options contract. The P-Tech was a composite of 100 technology stocks developed by the Pacific Stock Exchange. P-Tech Futures and P-Tech Options contracts ceased trading in March 2001.

7. NYFE appoints members to a NYFE settlement committee (the "Settlement Committee") for the purpose of determining all NYFE contracts settlement prices. NYFE Rule 315 sets forth the settlement procedures to be used by the Settlement Committee, which as relevant are as follows:

> The settlement price for each contract, other than expiring contracts on the last day of trading, shall be determined as follows:

> (a) The settlement price shall be the average of all prices of the closing range of the contract involved. When an average is a fraction, the settlement price shall be the next full trading point above or below the fractional average depending on which is nearer the last price recorded.
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> (b) If, for any contract, no transactions have been executed during the respective closing period, the settlement price for such contract shall be the average of the highest bid and the lowest offer during such closing period; provided, however, that a bid or offer which is out of line shall not be considered.
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> (c) If there are no bids and offers for a contract during its closing period, the settlement price shall be determined by reference to the prevailing differences between such contract and the nearest active month of the respective contract market during the day in the case of a future, and the nearest active strike price of the same series in the case of an option.
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> (d) If a settlement price derived by employing the foregoing procedures is not consistent with trades in other months during the closing range or with market information known to the Futures and Options Contract Committee, the Committee may establish a settlement price at a level consistent with such other trades or market information and shall prepare a written record setting forth the basis for such settlement . . . .

8. At the end of every trading day, NYFE reported a settlement price for each P-Tech Futures and P-Tech Options contract. The settlement prices were disseminated by the Board of Trade of the City of New York, Inc. ("NYBOT") to members of the public. Settlement prices were used, among other things, by clearinghouses to calculate the variation margin of NYFE's clearing firms, which is the difference between the settlement price and the trade price or, for a held position, the previous day's settlement price.

9. All P-Tech settlement prices were calculated using a computer maintained on the floor of the NYFE. The computer database contained some pre-programmed information from which the computer calculated certain variables needed to determine options settlement prices.

Other variables, including the day's P-Tech futures settlement price, had to be input each day. The computer then calculated P-Tech Options settlement prices based upon all of the information in the database.

b. Norman Eisler's and First West's
<u>Manipulation of Settlement Prices</u>

10. At all times during the relevant time period, Eisler served on the Settlement Committee. Eisler was responsible for settling the P-Tech Options contracts at the end of each trading day.

11. Two other NYFE members also served on the Settlement Committee. They shared responsibility for determining the settlement prices of the options on the New York Stock Exchange Composite Index ("YX") futures contracts and the options on the Russell 1000 Index ("Russell") futures contracts. If one of the two other NYFE members was not available one day, the other would settle both contracts, and vice versa.

12. If Eisler was not available to settle the P-Tech Options contracts, one of the two other NYFE members generally would substitute. That member, however, settled the P-Tech Options pursuant to instructions left by Eisler, generally referred to as the "automatic plan." The "automatic plan" meant that the only change made from the previous day in determining the settlement prices for the P-Tech Options would be to input the new P-Tech futures settlement price. The computer would then calculate the settlement prices of all of the P-Tech Options contracts based upon the new futures price and the previous day's data.

13. Eisler did not use any of the settlement processes enumerated in NYFE Rule 315 in determining the P-Tech Options settlement prices.

14. In addition to determining the settlement prices for the P-Tech Options contracts, Eisler also traded the contracts. From in or about April 1996 through May 15, 2000, Eisler

purchased and sold, among other things, P-Tech Futures and P-Tech Options contracts for the account of First West.

15. Eisler settled the P-Tech Options market for the purpose and with the intent of causing the settlement prices of the P-Tech Options contracts to be artificial.

16. Eisler created artificial settlement prices by controlling the implied volatility of certain P-Tech Option contracts entered into the NYFE computer database in connection with its duty to settle the P-Tech Option contracts. Such volatility figures did not reflect the legitimate forces of the marketplace.

17. Eisler made false, fictitious and fraudulent representations to the NYFE concerning the volatility of P-Tech Option contracts. In doing so, he also caused the NYFE to disseminate artificial settlement prices to the public.

18. As a result of the artificial settlement prices, the First West trading account's margin requirements were reduced significantly. On a typical day between August 2, 1999 and May 12, 2000, the value of the First West account, for margin purposes, was overstated by over $2 million.

c. The End of the Manipulation

19. On May 15, 2000, Eisler did not serve on the Settlement Committee and did not determine the settlement prices for the P-Tech Options contracts. The other NYFE member set the settlement prices. Instead of using the "automatic plan," the settlement prices were set in the same manner as the YX and the Russell options contracts. The newly determined settlement prices of the P-Tech Option contracts fell significantly from the day before. First West's margin deficit as of May 15, 2000 was $6,566,610 and the trading account's value was a negative $4,923,169.

20. Eisler did not meet the margin call and First West's trading positions were subsequently transferred to another registered futures commission merchant.

IV.

VIOLATIONS OF THE COMMODITY EXCHANGE ACT ("ACT") AND COMMISSION REGULATIONS ("REGULATIONS")

COUNT ONE

VIOLATIONS OF SECTION 9(a)(4) OF THE ACT BY RESPONDENTS: FALSE REPRESENTATIONS

21. Paragraphs 1 through 20 above are re-alleged and incorporated by reference.

22. From at least August 1, 1999 through May 12, 2000, Eisler and First West willfully made false, fictitious or fraudulent statements or representations, or made or used false, fictitious or fraudulent documents, to the NYFE, interfering with NYFE's ability to settle the P-Tech Options contracts pursuant to its contract market duties, in violation of Section 9(a)(4) of the Act, 7 U.S.C. §13(a)(4) (1994).

23. Each false, fictitious or fraudulent statement, representation or document made during the relevant time period, including, but not limited to, those specifically identified and incorporated by reference herein, is alleged as a separate and distinct violation of Section 9(a)(4) of the Act.

COUNT TWO

VIOLATIONS OF SECTIONS 6(c) AND 6(d) OF THE ACT AND SECTION 33.9(d) OF THE COMMISSION'S REGULATIONS BY RESPONDENTS: MANIPULATION

24. Paragraphs 1 through 20 above are re-alleged and incorporated by reference.

25. From at least August 1, 1999 through May 12, 2000, Eisler and First West manipulated or attempted to manipulate the market prices of options on P-Tech futures contracts,

in violation of Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9, 15, and 13b and Regulation 33.9(d), 17 C.F.R. § 33.9(d) (2000).

26. Each manipulated market price during the relevant time period, including but not limited to, those specifically identified and incorporated by reference herein, is alleged as a separate and distinct violation of Sections 6(c) and 6(d) of the Act and Commission Regulation 33.9(d).

V.

By reason of the foregoing allegations, the Commission deems it necessary and appropriate, pursuant to its responsibilities under the Act, to institute public administrative proceedings to determine whether allegations set forth in Parts I-IV above are true, and, if so, whether an appropriate order should be entered in accordance with Sections 6(c), 6(d), 8a(3) and 8a(4) of the Act, 7 U.S.C. §§ 9, 15, 13b, 12a(3) and 12a(4) (1994).

Section 6(c) allows the Commission to enter an order (1) prohibiting a respondent from trading on or subject to the rules of any contract market and requiring all contract markets to refuse such person all trading privileges thereon for such a period as may be specified in the Commission's Order, (2) if the respondent is registered with the Commission in any capacity, suspending, for a period not to exceed six months, or revoking the registration of that respondent, (3) assessing against the respondent a civil penalty not more than the higher of $110,000 or triple the monetary gain to the respondent for each violation of the Act or Regulations committed between November 27, 1996 and October 22, 2000, and (4) requiring restitution to customers of damages proximately caused by the violations of the respondent.

Section 6(d) allows the Commission to enter an Order directing that the respondent cease and desist from violating the provisions of the Act and Regulations found to have been violated.

Sections 8a(3) and 8a(4) allow the Commission to refuse to register, to register conditionally, to suspend, to revoke or to place restrictions upon the registration of any respondent who is found to meet any of the criteria for such action by the Commission provided for in Section 8a(3).

VI.

WHEREFORE, IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence and hearing arguments on the allegations set forth in Parts I-IV above be held before an Administrative Law Judge, in accordance with the Rules of Practice under the Act, 17 C.F.R. § 10.1 et seq. (2000), at a time and place to be fixed as provided in Section 10.61 of the Rules of Practice, 17 C.F.R. § 10.61 (2000), and that all post-hearing procedures shall be conducted pursuant to Sections 10.81 through 10.107 of the Rules of Practice, 17 C.F.R. §§ 10.81 through 10.107 (2000).

IT IS FURTHER ORDERED that Eisler and First West (collectively "respondents") shall file an Answer to the allegations against them in the Complaint within twenty (20) days after service, pursuant to Section 10.23 of the Rules of Practice, 17 C.F.R. § 10.23 (2000), and pursuant to Section 10.12(a) of the Rules of Practice, 17 C.F.R. § 10.12(a) (2000), shall serve two copies of such Answer and of any document filed in this proceeding upon Richard Glaser or Leanna Morris, Trial Attorneys, Commodity Futures Trading Commission, Division of Enforcement, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, or upon such other counsel as may be designated by the Division. If respondents fail to file the required Answer or fail to appear at a hearing after being duly served, respondents shall be deemed in default, and the proceeding may be determined against them upon consideration of the Complaint, the allegations of which shall be deemed to be true.

IT IS FURTHER ORDERED that this Complaint and Notice of Hearing shall be served on respondents personally or by certified or registered mail forthwith pursuant to Section 10.22 of the Commission's Rules, 17 C.F.R. § 10.22 (2000).

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of the investigative or prosecutorial functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon this matter except as witness or counsel in proceedings held pursuant to notice.

By the Commission.

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Catherine D. Dixon
Assistant Secretary to the Commission
Commodity Futures Trading Commission

Date: July 11, 2001