

**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**

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<b>In the Matter of:</b>	:	
	:	
<b>Donald M. Fishback Jr.</b>	:	<b>CFTC Docket No. 01-03</b>
	:	
<b>-and-</b>	:	<b>ORDER MAKING FINDINGS</b>
	:	<b>AND IMPOSING REMEDIAL</b>
<b>The Donald M. Fishback Company, Inc.,</b>	:	<b>SANCTIONS</b>
	:	
<b>Respondents.</b>	:	

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**I.**

On November 16, 2000, the Commodity Futures Trading Commission ("Commission") filed a four-count Complaint and Notice of Hearing ("Complaint") against Donald M. Fishback, Jr. ("Fishback") and The Donald M. Fishback Company, Inc. ("The Fishback Company") (jointly referred to as "Respondents"). The Complaint charged that Respondents violated Sections 4c(b) and 4o(1)(A) and (B) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 4c(b) and 6o(1)(A) and (B) (1994), and Commission Regulations 4.41(a), 4.41(b)(1)(i) and 33.10, 17 C.F.R. §§ 4.41(a), 4.41(b)(1)(i), and 33.10 (2000).<sup>1</sup>

**II.**

In order to dispose of the allegations and issues raised in the Complaint, Respondents have submitted an Offer of Settlement ("Offer") that the Commission has determined to accept. Without admitting or denying any of the allegations of the Complaint or the findings herein, and prior to any adjudication on the merits, Respondents acknowledge service of this Order Making Findings and Imposing Remedial Sanctions ("Order"). Respondents consent to the use of the findings herein in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.<sup>2</sup>

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<sup>1</sup> The Act was amended by the Commodity Futures Modernization Act of 2000, Appendix E to Pub. L. No. 106-554, 114 Stat. 2763 (2000). This amendment, however, resulted in no material changes to any of the sections of the Act that the Complaint alleges Respondents violated.

<sup>2</sup> Respondents do not consent to the use of the Offer or this Order as the sole basis for any other proceeding brought by the Commission other than a proceeding to enforce the terms of this Order, nor do Respondents consent to the use of the Offer, or the findings in the Order consented to in the Offer, by any other person or entity in this or any other proceeding. The findings made

(Footnote continued . . .)

### III.

The Commission finds the following:

#### A. SUMMARY

From approximately February 1996 through July 1999, The Fishback Company, which acted as a commodity trading advisor ("CTA"), and Fishback, its principal and sole owner, offered and sold to members of the public products and services that gave advice regarding trading commodity options on futures ("options") based upon Respondents' Options and Derivatives Decision Support ("ODDS") system. These products and services consisted of weekly facsimiles containing specific buy and sell options trading recommendations offered under the names "ODDS Fax Hotline" and "ODDS Bond Fax Hotline;" a monthly facsimile or mailing containing specific buy and sell options trading recommendations called the "Super Traders Journal;" and options trading computer software called "ODDS Trade Master."

Respondents solicited customers and prospective customers by making material misrepresentations of the profits and losses generated by the ODDS system, including, but not limited to, statements that suggested that the ODDS system had achieved substantial profits through actual trading when, in fact, such profits were based, at best, only on hypothetical or simulated (hereinafter referred to as "simulated") trading, and by making false statements regarding Fishback's trading experience. Respondents also failed to include in their solicitation material the warning regarding the limitations of simulated trading required by Commission Regulation 4.41(b)(1)(i).

#### B. RESPONDENTS

1. Donald M. Fishback, Jr. resides at 1251 Elkchester Road, Lexington, Kentucky 40510. Fishback is president of respondent The Fishback Company and of Fishback Brokerage Services, Inc. ("Fishback Brokerage"), a registered introducing broker ("IB"). Fishback also has been registered as the sole associated person ("AP") of Fishback Brokerage since December 1998.

2. The Donald M. Fishback Company, Inc. is located at 1251 Elkchester Road, Lexington, Kentucky 40510. The Fishback Company was established in December 1995 and has been registered with the Commission as a CTA since May 1998.

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(... footnote continued)

in the Order are not binding on any other person or entity named as a defendant or respondent in any other proceeding.

## C. FACTS

### 1. Respondents' Trading System

Fishback formed The Fishback Company in December 1995. Respondents offered commodity options trading products and services which utilized their ODDS trading system as follows: (A) the ODDS Fax Hotline, a weekly facsimile offered from approximately March 1996 to December 1996, which contained specific buy and sell commodity options trading recommendations for various exchange-traded commodity options, including cocoa, sugar, wheat, coffee, soybeans, corn, oil and gold; (B) the Super Traders Journal, a monthly facsimile or mailing offered from approximately April 1996 to November 1997, which contained specific buy and sell trading recommendations in various exchange-traded commodity options, including corn, natural gas, copper, gold, silver, currencies, and Treasury Bonds ("T-Bond"); (C) the ODDS Bond Fax Hotline, a weekly facsimile offered from approximately February 1998 to January 1999, which provided trading recommendations for exchange-traded T-Bond options; and (D) the ODDS Trade Master, an options trading software system offered from approximately February 1996 to August 1999.

### 2. Respondents' Solicitation Material

Respondents solicited ODDS customers and prospective customers by several means. During 1996 through 1999, respondents distributed or caused to be distributed at least six different pieces of solicitation material through direct mail; placed or caused advertisements to be placed in a national magazine targeted to futures and options customers or prospective customers; and held seminars in various cities throughout the United States at which they offered the ODDS trading products and services. Respondent Fishback was the source of all performance representations contained in the solicitation material and reviewed and approved the content of each piece of solicitation material.

Respondents' direct mail solicitation material contained material misrepresentations, including, but not limited to, claims that: options trading with the ODDS system resulted in substantial profits with little or no risk; ODDS had been successful in trading in specific commodities markets; and Fishback had extensive options trading experience and a successful trading history. For example, during the time period of approximately February through March 1996, Respondents falsely stated in their solicitation material that "ODDS has conquered the markets and amassed fortunes" by having been "100% accurate for six months"; "[ODDS] specific recommendations produced \$48,112.50 profit and no losses"; and that, "for five months every ODDS trade has been a winner." During the time period of 1996 to 1997, Respondents falsely stated in their solicitation material that the recommendations contained in the ODDS Bond Fax Hotline they offered and sold to customers had made substantial profits. The solicitation material claimed, among other false statements, that "[s]ince mid-March [of 1996], the ODDS Bond Fax has not had one loser"; the ODDS Bond Fax had made "[e]normous profits in T-Bond Options"; and that the ODDS Bond Fax's historical record included "\$4,441 average profit per month." In solicitation material distributed in or about October 1997, Respondents falsely claimed that trading with the ODDS system had generated profits in specific commodities markets. Respondents falsely claimed that ODDS had generated "\$96,000 profit in soybeans,"

"\$64,640 profit in cocoa," "\$86,800 profit in British Pounds," "\$30,450 profit in copper," "\$20,625 profit in T-Bonds," and "\$79,750 profit in S&P 500."

The trades recommended by Respondents' ODDS system did not make the profits and minimize losses as stated in their solicitation material. In fact, a number of customers who traded according to the ODDS recommendations suffered trading losses. Moreover, the profits claimed were based solely on simulated trading. Fishback has never actually traded soybeans, cocoa, British Pounds, T-Bonds or any other commodity options using his ODDS system. Thus, Respondents' claims in their solicitation material that the ODDS system had "generated [profitable] trades" and that customers would "trade right along with [Fishback]," misleadingly implied that Respondents' reported trading results were based upon actual trading, when in fact, they were based, at best, only upon simulated trading.

In solicitation material distributed in or about October 1997, Respondents misrepresented Fishback's trading experience by claiming that "Fishback is considered one of the world's most successful options traders"; "[Fishback] is one of a tiny handful of major league traders"; and that "[Fishback] can attribute all of his market success" to his ODDS system. Contrary to these statements, however, Fishback has never engaged in any large-scale commodity options trading and has never traded any commodity futures or options account pursuant to the ODDS system.

From November 1996 through July 1999, Respondents also solicited prospective customers by placing ads in a national magazine targeted to options trading customers. Respondents' ads claimed that by using Respondents' ODDS system, a customer could "virtually eliminate losing trades." In fact, some customers consistently sustained losses prior to and during the time these ads appeared.

### 3. Failure to Include Hypothetical or Simulated Performance Disclaimer

In most instances throughout the relevant time period, Respondents did not disclose the simulated nature of their trading claims in their solicitation material. Indeed, although some of Respondents' solicitation material contained a statement that appeared similar to that required by Commission Regulation 4.41(b) regarding the limitations of hypothetical or simulated results, the Respondents altered that boilerplate language in a way that undercut its meaning. Specifically, Respondents added to the simulated performance disclaimer references to Respondents' "past results" or "past performance," which suggested that Respondents' profits were based upon actual trading. These references to "past results" or "past performances," which are not contained in the disclosure statement required by Commission Regulation 4.41(b)(1)(i), misleadingly implied that real trading had occurred, and thereby undercut the warning about simulated trading. Moreover, to the extent the disclaimer was valuable to investors, it typically appeared in a different location from the reported simulated results, such as towards the back of the brochure or in fine print at the bottom of the material, where it could not adequately warn

investors. Some of Respondents' other solicitation material made bold claims of profits and contained no hypothetical or simulated performance disclaimer.<sup>3</sup>

#### D. LEGAL DISCUSSION

##### 1. Respondents Violated Section 4o(1) of the Act and Commission Regulation 4.41(a)

Section 4o(1) of the Act prohibits CTAs from: (A) employing any device, scheme or artifice to defraud any client or participant or prospective client or participant, or (B) engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant. Section 4.41(a) of the Regulations prohibits a CTA or principal thereof from advertising in a fraudulent or misleading manner.

In order to establish a violation of Section 4o of the Act and Section 4.41 of the Regulations, the Division must prove that the respondent was (i) a CTA or, with respect to Section 4.41 of the Regulations, a principal thereof, and (ii) either (A) employed any device, scheme, or artifice to defraud any client or prospective client, or (B) engaged in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. Section 4o(1) of the Act which also requires the use of the mails or any means or instrumentality of interstate commerce, prohibits both registered and unregistered CTAs from defrauding their clients. In re R&W Technical Services, Ltd., [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,582 (CFTC March 16, 1999), aff'd in relevant part, R&W Technical Services, Ltd. v. Commodity Futures Trading Commission, 205 F.3d 165, 170 (5<sup>th</sup> Cir. 2000) (prohibiting fraud by an unregistered CTA who sold trading systems to the public); CFTC v. Savage, 611 F.2d 270, 281 (9<sup>th</sup> Cir. 1979) (defendant who committed fraud held himself out to the public as a CTA without being registered with the Commission). Section 4.41 of the Regulations also applies to all CTAs, regardless of whether those CTAs are required to be registered.

Former Section 1(a)(5) of the Act, redesignated as Section 1(a)(6) of the Act under the Commodity Futures Modernization Act, defines a CTA as a person who "for compensation or profit, engages in . . . advising others, either directly or through publications, writings, or electronic media as to the value of or the advisability of trading" in futures or options contracts. The Fishback Company met the definition of a CTA because, for a monthly fee, it issued specific buy and sell trading recommendations to ODDS Fax Hotline, ODDS Bond Fax Hotline, and Super Traders Journal customers. Respondents' recommendations told the customers when to buy or sell a particular commodity option, the quantity of the commodity option to buy or sell, the price at which to buy or sell the commodity option and the amount of capital to allocate towards buying or selling the commodity option. Commodity Trend Service v. CFTC, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,777 at 48,705 (N.D. Ill. Sept. 29, 1999) (corporation regularly issuing commodity related publications which contain specific

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<sup>3</sup> For example, Respondents' solicitation material touting profits in commodity option markets such as soybeans, cocoa, British Pounds and T-Bond options contained no simulated performance disclaimer.

recommendations for buying and selling commodity futures or options contracts is a CTA), aff'd, 233 F.3d 981 (7<sup>th</sup> Cir. 2000).

Misrepresentations and omissions of material facts regarding options transactions violate the antifraud proscriptions of the Act. In re Staryk, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,206 at 45,810 (CFTC Dec. 18, 1997); Kelley v. Carr, 442 F. Supp. 346, 351-54 (W.D. Mich. 1977), aff'd in part and rev'd in part, 691 F.2d 800 (6<sup>th</sup> Cir. 1980). A statement is material if it is substantially likely that a reasonable investor would consider the matter important in making an investment decision. TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976); Sudol v. Shearson Loeb Rhoades, Inc., [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,748, at 31,119 (CFTC Sept. 30, 1985). Generally, omissions and misrepresentations of material fact regarding commodity futures and commodity options transactions violate the antifraud provisions of the Act, including omissions and representations concerning the likelihood of profit and other matters that a reasonable investor would consider material to his investment decisions. See, e.g., CFTC v. Avco Financial Corp., 28 F.Supp.2d 104, 115-16 (S.D.N.Y. 1998), aff'd in part and remanded in part on other grounds sub nom. Vartuli v. CFTC, 228 F.3d 94 (2d Cir. 2000); First Nat. Monetary Corp. v. Weinberger, 819 F.2d 1334, 1340 (6<sup>th</sup> Cir. 1987); CFTC v. Crown Colony Commodity Options Ltd., 434 F. Supp. 911 (S.D.N.Y. 1977). The same conduct that violates the anti-fraud proscriptions of the Act also violate Section 4o(1) of the Act and Commission Regulation 4.41(a) when such conduct is done by a CTA. CFTC v. Skorupskas, 605 F. Supp. 923, 932-22 (E.D. Mich. 1985); R&W Technical, ¶ 27,582 at 47,745; In re Slusser, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 48,315 (CFTC July 19, 1999), aff'd in part, remanded in part, 210 F. 3d 783 (7<sup>th</sup> Cir. 2000).

Scienter must be proved to establish a violation of Section 4o(1)(A), but it is not necessary to establish a violation of 4o(1)(B). In re Kolter, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,262 at 42,198 (CFTC Nov. 8, 1994, amended, Nov. 16, 1994) (citations omitted). Under 4o(1)(B), a respondent is liable if his actions "operate as a fraud" even if that was not the respondent's intent. Id.

Respondents knew that the ODDS system had not made the profits claimed in the solicitation material and that some customers suffered trading losses. Respondents also knew that the trading results used in the solicitation material were based solely on, at best, simulated trading, but failed to disclose this material fact. Therefore, Respondents violated Section 4o(1)(A) of the Act. Cf. Hammond v. Smith Barney, Harris Upham & Co., [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,659 n.21 (CFTC March 1, 1990) (reckless disregard for the truth sufficient to establish a violation of the anti-fraud provisions of the Act).

Claims, such as those made by Respondents, that ODDS customers would make substantial profits while incurring minimal risks by trading according to ODDS' recommendations are fraudulent. See R&W Technical, ¶ 27,582 at 47,741 (bold predictions of profits combined with claims that risks are subject to specific limitations are fraudulent); Crown Colony, 434 F. Supp. 911 (S.D.N.Y. 1977) (solicitation was misleading and inaccurate when "they conveyed the distinct impression that extraordinary short-term profits were all but certain to be realized by investors"). Respondents' representations which suggested that ODDS' performance results were actual trading results, when such claims were based on simulated trading, are also fraudulent. "Because simulated results inherently overstate the reliability and

validity of an investment system, and because extravagant claims understate the inherent risks in commodities trading, a reasonable investor would find [such] fraudulent misrepresentations to be material." R&W Technical, 205 F.3d 165, 170 (5<sup>th</sup> Cir. 2000). Respondents' misrepresentation of Fishback's trading experience in their solicitation material also violates Section 4o of the Act. Cf. Hirk v. Agri-Research Council, Inc., 561 F.2d 96, 98, 104 (7th Cir. 1977) (misrepresentations regarding the profitability of an enterprise and the competency and experience of the staff stated a cause of action under Section 4b of Act).

2. Respondents Violated Commission Regulation 4.41(b)(1)(i)

Section 4.41(b)(1)(i) of the Regulations makes it unlawful for a CTA to fail to include the required warnings about the limitations of trading performance numbers based upon hypothetical or simulated data.

Section 4.41(b)(1)(i) of the Regulations provides:

(1) No person may present the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest or a series of transactions in a commodity interest ... unless such performance is accompanied by one of the following: (i) The following statement: 'Hypothetical or simulated performance results have certain inherent limitations. Unlike an actual performance record, simulated results do not represent actual trading. Also, since the trades have not actually been executed, the results may have under- or over-compensated for the impact, if any, of certain market factors, such as lack of liquidity. Simulated trading programs in general are also subject to the fact that they are designed with the benefit of hindsight. No representation is being made that any account will or is likely to achieve the profits or losses similar to those shown.'

Respondents violated this regulation by presenting simulated performance results without accompanying those results with the prescribed cautionary statement. Although Respondents provided some disclaimer language regarding hypothetical or simulated results, Respondents undermined the effectiveness of that disclaimer by including references to ODDS' "past results," or "past performances," which suggested that real trading occurred. Respondents further undermined the effectiveness of the purported disclaimer by placing it in a different location from the reported simulated results, such as towards the back of the brochure or in fine print at the bottom of the material. See, e.g., Vartuli v. CFTC, 228 F.3d 94, 106-07 (2d Cir. 2000). (failure to have risk disclosure statement accompany the representations to which disclosure was meant to apply results in violation of Commission Regulation 4.41(b)).

#### IV.

#### **OFFER OF SETTLEMENT**

Respondents have submitted an Offer of Settlement in which, without admitting or denying the findings herein, they acknowledge service of the Complaint and this Order, admit the jurisdiction of the Commission with respect to the matters set forth in the Complaint and this Order and waive: (1) a hearing; (2) all post-hearing procedures; (3) judicial review by any court; (4) any objection to the staff's participation in the Commission's consideration of the Offer; (5) all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-232, 110 Stat. 862-63, and part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, et seq. (2000), relating to, or arising from this action; and (6) any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief.

Respondents stipulate that the record basis on which the Order is entered shall consist solely of the findings in this Order to which they have consented in the Offer. Respondents also consent to the use of the findings contained in this Order in this proceeding and in any other proceedings brought by the Commission or to which the Commission is a party. Respondents consent to the Commission's issuance of this Order, which makes findings as set forth herein and orders that Respondents: (1) cease and desist from violating the provisions of the Act they are found to have violated; (2) pay a civil monetary penalty of seventy-five thousand dollars (\$75,000); and (3) comply with their undertakings as set forth below.

#### V.

#### **FINDING OF VIOLATIONS**

Based on the foregoing the Commission finds that Respondents violated Sections 40(1)(A) and (B) of the Act, 7 U.S.C. §§ 60(1)(A) and (B), and Commission Regulations 4.41(a) and 4.41(b)(1)(i), 17 C.F.R. §§ 4.41(a) and 4.41(b)(1)(i).

#### VI.

#### **ORDER**

Accordingly, **IT IS HEREBY ORDERED THAT:**

1. Respondents shall cease and desist from violating Sections 40(1)(A) and (B) of the Act, as amended by the Commodity Futures Modernization Act of 2000, Appendix E to Pub. L. No. 106-554, 114 Stat. 2763 (2000), and Commission Regulations 4.41(a) and 4.41(b)(1)(i).

2. Respondents shall pay a civil monetary penalty of seventy-five thousand dollars (\$75,000) within ten (10) business days of this Order. Respondents shall make such payment by electronic funds transfer to the account of the Commission at the United States Treasury or by

certified check or bank cashier's check made payable to the Commodity Futures Trading Commission and addressed to Dennese Posey, or her successor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21<sup>st</sup> Street, N.W., Washington D.C. 20581, under cover of a letter that identifies Respondents and the name and docket number of the proceeding. A copy of the cover letter and the form of payment shall be simultaneously transmitted to Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21<sup>st</sup> Street, N.W., Washington D.C. 20581. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if Respondents fail to make payment of their penalty within fifteen (15) days of the due date, they shall be automatically prohibited from trading on or subject to the rules of any registered entity as defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29), until they show to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date of payment has been made.

3. Respondents shall comply with the following undertakings:

A. Registration with the Commission. Respondents shall, within five days of the date of this Order, initiate the withdrawals of The Fishback Company's CTA registration, Fishback Brokerage's IB registration, and Fishback's AP registration. Respondents shall not, for a period of five years following the date of Respondents' withdrawal of these registrations: (i) apply for registration or seek exemption from registration or seek exemption from registration with the Commission in any capacity, and shall not engage in any activity requiring registration or exemption from registration, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9); (ii) act, directly or indirectly, as a principal, officer, director, agent or employee of any person registered, required to be registered or exempted from registration, unless such exemption is pursuant to Commission Regulation 4.14(a)(9); and (iii) act, directly or indirectly, in a supervisory capacity over any person employed by any person registered, required to be registered or exempted from registration, unless such exemption is pursuant to Commission Regulation 4.14(a)(9).

B. Fraudulent Misrepresentations

1. Respondents shall not misrepresent, expressly or by implication:

(a) the performance, profits or results achieved by, or the results that can be achieved by, users, including themselves, of any commodity futures or options trading system or advisory service; and

(b) the risks associated with trading pursuant to any commodity futures or options trading system or advisory service;

2. Respondents shall not present the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest or series of transactions in a commodity interest unless such performance is accompanied by the following statement, as required by 17 C.F.R. § 4.41(b):

**Hypothetical or simulated performance results have certain inherent limitations. Unlike an actual performance record, simulated results do not represent actual trading. Also, since the trades have not actually been executed, the results may have under- or over-compensated for the impact, if any, of certain market factors, such as lack of liquidity. Simulated trading programs in general are also subject to the fact that they are designed with the benefit of hindsight. No representation is being made that any account will or is likely to achieve profits or losses similar to those shown.**

In doing so, Respondents shall clearly identify those hypothetical or simulated performance results that were based, in whole or in part, on hypothetical or simulated trading results;

3. Respondents shall not make any representation of financial benefits associated with any commodity futures or options trading system or advisory service without first disclosing, prominently and conspicuously, that futures and options trading involves high risks with the potential for substantial losses;

4. Respondents shall not represent, expressly or by implication:

(a) the performance, profits or results achieved by, or the results that can be achieved by, users, including themselves, of any commodity futures or options trading system or advisory service;

(b) the risks associated with trading pursuant to any commodity futures or options trading system or advisory service;

(c) that the experience represented by any user, testimonial or endorsement of the commodity futures or options trading system or advisory service represents the typical or ordinary experience of members of the public who use the system or advisory service;

unless: (i) they possess and rely upon a reasonable basis substantiating the representation at the time it is made; and (ii) for two (2) years after the last date of the dissemination of any such representation, they maintain all advertisements and promotional materials containing such representation and all materials that were relied upon or that otherwise substantiated such representation at the time it was made, and make such materials immediately available to the Division for inspection and copying upon request; and

C. Public Statements Respondents agree that neither they nor any of their agents or employees acting under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegations in the Complaint or findings in the Order or creating, or tending to create, the impression that the Complaint or the Order is without a factual basis; provided, however, that nothing in this provision affects Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other

proceedings to which the Commission is not a party. Respondents will undertake all steps necessary to assure that all of their agents and employees understand and comply with this agreement.

Unless otherwise specified, the provisions of this Order shall be effective on this date. A copy of this Order shall be served on Respondents at the addresses set forth in the caption of this Order, on all contract markets, and on the National Futures Association.

By the Commission.

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Jean A. Webb  
Secretary to the Commodity  
Futures Trading Commission

Date: July 2, 2001