

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA**

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COMMODITY FUTURES TRADING COMMISSION	)	
1155 21 <sup>st</sup> Street, N.W.	)	Case No. 2:02-CV-94-FTM-
Washington, DC 20581	)	29DNF
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
THOMAS D. CHILCOTT, individually and d/b/a	)	
TRADE MASTER OF SOUTHWEST FLORIDA	)	
3701 Packinghouse Road	)	
Alva, Florida 33920,	)	
	)	
TED E. WHIDDEN	)	
4021 Ellis Road	)	
Fort Myers, Florida 33905,	)	
	)	
and	)	
	)	
LEONA WESTBROOK	)	
3701 Packinghouse Road	)	
Alva, Florida 33920	)	
	)	
Defendants.	)	
	)	
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**COMPLAINT FOR A PERMANENT INJUNCTION,  
OTHER EQUITABLE RELIEF  
AND CIVIL MONETARY PENALTIES**

**I. SUMMARY**

1. Since in or about September 1999, Thomas D. Chilcott, individually and doing business as “Trade Master of Southwest Florida,” (“Chilcott”) and Ted E. Whidden (“Whidden”) have solicited clients and prospective clients to open individual accounts and to

trade in commodity futures contracts. Chilcott, Whidden and Leona Westbrook (“Westbrook”) (collectively “Defendants”) have also operated a pool for the purpose of investing in commodity futures contracts (the “Pool”), and have solicited pool participants and prospective pool participants to invest in the Pool, all in violation of the Commodity Exchange Act, as amended (the “Act”), and Commission Regulations promulgated thereunder (“Regulations”).

2. During the course of the Pool’s operation, it has lost approximately \$300,000 trading. In addition, Defendants have misappropriated at least 1 million dollars of the Pool’s funds for their personal use. Despite this, Defendants have represented to Pool participants that the Pool is trading profitably and have returned to some Pool participants their full principal or purported profits out of other participant’s funds for the purpose of concealing trading losses and their misappropriation, all in violation of the Act and Regulations.

3. Although Defendants and their clients knew that Chilcott would be trading the individual accounts, Chilcott and Whidden told clients opening individual accounts to give discretionary trading authority to Whidden, rather than Chilcott, and to falsely state on the power of attorney form that Whidden was a “business partner” of the clients. Defendants told clients that Whidden was being given power of attorney to trade because Chilcott had too many accounts to handle by himself and Whidden was assisting him. Defendants failed to disclose to clients that, in fact, Chilcott is prohibited from trading customer accounts and, therefore, could not accept discretionary trading over the accounts or direct the trading in the Pool.

4. Defendants have engaged in, are engaging in and, unless restrained and enjoined, will continue to engage in, acts and practices which constitute violations of Sections 4b(a)(i) and (iii), 4k(2) and (3), 4m(1), 4n(4), 4o(1) and 6c of the Act, 7 U.S.C. §§ 6b(a)(i) and (iii), 6k(2) and (3), 6m(1), 6n(4), 6o(1) and 13a-1 (1994), and Sections 3.12, 4.20, 4.21, 4.22 and 4.31 of the Regulations, 17 C.F.R. §§ 3.12, 4.20, 4.21, 4.22 and 4.31 (2001).

5. Chilcott's activities with respect to the individual accounts and the Pool were in violation of a Final Judgment and Order of Permanent Injunction and Equitable Relief entered by the U.S. District Court for the District in Colorado in the case Commodity Futures Trading Commission v. Chilcott Portfolio Mgmt, Inc., et. al., Civil Action No. 81-F-999, Order No. 1981-9, (D. Colo. July 10, 1981) (the "1981 Order"), which permanently enjoined Chilcott from, among other things, defrauding any persons, soliciting clients or pool participants, and directing or causing to be executed trades or contracts on behalf of his customers. Chilcott's trading for customers in violation of the 1981 Order also constitutes violations of Section 6c of the Act, 7 U.S.C. §13a-1 (1994). Whidden and Westbrook aided and abetted Chilcott's violations of the 1981 Order, Act and Regulations in that they acted in active concert or participation with Chilcott in his activities, knowing that Chilcott was prohibited from such activities.

6. Accordingly, the Commodity Futures Trading Commission (the "Commission") brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, to enjoin the Defendants' unlawful acts and practices and to compel their compliance with the Act. In addition, the Commission seeks disgorgement of the Defendants' ill-gotten gains,

restitution to customers, civil monetary penalties and such other relief as this Court may deem necessary or appropriate.

## **II. JURISDICTION AND VENUE**

7. The Act establishes a comprehensive system for regulating the purchase and sale of commodity futures contracts and options on commodity futures contracts. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which provides that, whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order promulgated thereunder, the Commission may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

8. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because the Defendants are found in, inhabit, or transact business in this District, or the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District, among other places. In particular, Defendants reside in Florida and have solicited and received funds from investors residing in Florida.

9. Unless restrained and enjoined by this Court, the Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below.

### **III. THE PARTIES**

10. Plaintiff Commission is an independent federal regulatory agency that is charged with the administration and enforcement of the Act, 7 U.S.C. §§ 1 et seq., and the regulations promulgated thereunder.

11. Defendant Thomas D. Chilcott resides in Alva, Florida, and is doing business individually and as Trade Master of Southwest Florida at the same address. Chilcott was registered with the Commission as a commodity trading advisor from 1979 to 1981, a commodity pool operator from 1980 to 1981, and an associated person of a registered futures commission merchant (“FCM”) until 1981.

12. Defendant Ted E. Whidden resides in Fort Myers, Florida. He has never been registered with the Commission in any capacity.

13. Defendant Leona Westbrook resides in Alva, Florida, and is married to Chilcott. She has never been registered with the Commission in any capacity.

### **IV. FACTUAL BACKGROUND**

#### **The Court’s Cease and Desist Order of 1981**

14. In July 1981, the United States District Court for the District of Colorado issued a Final Judgment and Order of Permanent Injunction and Equitable Relief against Chilcott and others. Chilcott was found to have violated certain provisions of the Act and Regulations in the operation of a commodity pool. The 1981 Order, among other things, permanently enjoined Chilcott from: 1) using the mails or any other means or instrumentalities of interstate commerce, directly or indirectly, to employ any device, scheme or artifice to defraud any person or to engage in any transaction, practice or course of

business which operates as a fraud or deceit upon any person in connection with any commodities transactions; 2) cheating and defrauding, or attempting to cheat and defraud, any person by any means whatsoever, in connection with any order to make or execute, the making or executing, or the confirmation or the execution of contracts of sale of commodities for future delivery; 3) soliciting, accepting or receiving funds from any prospective participant without first distributing a disclosure document in accordance with Regulation 4.21; 4) failing to provide account statements in accordance with Regulation 4.22; 5) soliciting or accepting any new customer accounts or any new deposits until further order of the court; and 6) directing or causing to be executed trades or contracts on behalf of his customers.

15. Chilcott was indicted on criminal charges in 1981 by the U.S. Attorney's Office for the State of Colorado for the same fraudulent activities alleged in the Commission's lawsuit, and sentenced to twelve years in federal prison. U.S. v. Thomas D. Chilcott, et.al., Criminal Case No. 81-CR-228 (D. Colo. 1981). Then, in 1989, after being released on parole, Chilcott was indicted and sentenced again by the U.S. Attorney's Office for the State of Colorado for, among other things, violating the Court's 1981 Order and committing fraud in connection with commodity futures trading from on or about February 1987 through on or about February 8, 1988. U.S. v. Thomas Chilcott, Criminal Case No. 89-CR-064 (D. Colo. 1989). Chilcott was subsequently indicted by the U.S. Attorney's Office for the Middle District of Pennsylvania in 1989 for, among other things, committing fraud against investors in a commodity pool from between on or about February 1, 1988 through on or about December 31, 1988. U.S. v. Thomas Dey Chilcott, Criminal Case No. 89-CR-

00064 (D. Pa. 1989). This indictment was subsequently transferred to U.S. District Court for the District of Colorado for sentencing in Case No. 89-CR-167 (D. Colo. 1989). In total, Chilcott served approximately 16 years for his criminal conduct. From time to time, Chilcott was released for parole, and subsequently re-arrested for parole violations.

### **Defendants' Current Activities**

16. Since in or about September 1999, Defendants Chilcott and Whidden have solicited prospective clients and prospective Pool participants to trade commodity futures contracts by opening individual trading accounts to be traded by Chilcott, and investing in the Pool to be traded by Chilcott. The Defendants referred to the Pool account as the “fast track” account, and claimed that it would be traded more aggressively than the individual accounts. One or more of the clients and Pool participants solicited belonged to the same church attended by Defendants, or were business acquaintances of Whidden.

17. Chilcott advised investors that he had formed a company called Trade Master of Southwest Florida for the purpose of trading commodity futures contracts. In October 2000, Trade Master of Southwest Florida was listed as a “doing business as” name with the Florida Division of Corporations, with Chilcott listed as the owner. The “doing business as” name filing was revised in December of 2000 to list Whidden as the owner, thereby eliminating any reference to Chilcott.

18. The address listed with the Florida Division of Corporations for Trade Master of Southwest Florida remains the home address of Chilcott and Westbrook.

19. In their solicitations of prospective clients and Pool participants, Chilcott and Whidden represented that Chilcott had previously been successful at trading commodity

futures contracts and could make money for investors. Chilcott and Whidden told investors that Chilcott made the trading decisions for the individual accounts as well as the Pool.

20. Clients interested in opening an individual trading account with Chilcott were required to fill out account opening applications with registered futures commission merchants. Although Defendants and their clients knew that Chilcott would be making all of the trading decisions for the individual accounts, Chilcott and Whidden told clients to give Whidden discretionary trading authority over their accounts. Chilcott told clients that Whidden was just assisting him in handling the accounts. Chilcott also told these clients that Whidden had to put on the power of attorney form that he was a “business partner” of the client, even though that was not true, as a basis for exemption from registration with the Commission.

21. Defendants failed to disclose to clients and Pool participants that Chilcott is prohibited from trading by the 1981 Order and could not, therefore, accept discretionary trading authority over their individual accounts or direct the trading in the Pool account.

22. Clients and Pool participants sent funds to Chilcott in the name of “Chilcott,” “Whidden” and “Trade Master.” Whidden and Westbrook opened various bank and trading accounts in their names, in which investor funds were deposited. At least 45 Pool participants invested at least 2.5 million dollars with Defendants, who deposited the funds into bank accounts in the name of Whidden, Whidden d/b/a Trade Master of Southwest Florida, or a joint bank account of Whidden and Westbrook. Approximately \$425,000 was returned to investors as account withdrawals of principal and/or purported profits in the Pool.

23. Clients and Pool participants paid a fee to Chilcott to manage the trading accounts.

24. Chilcott did not provide to clients and Pool participants a disclosure document prior to opening an account or investing in the Pool, and did not provide to Pool participants annual statements concerning the Pool's profits and losses.

25. Defendants told Pool participants that their investments were making money.

26. In fact, during the period from May 2000 to December 2001, the Pool lost approximately \$300,000 trading. In addition, the Defendants misappropriated Pool funds for their own use in the amount of at least 1 million dollars. For example, they misappropriated funds for the payment of Discover Platinum and Citibank Advantage credit cards, as well as remodeling, landscaping, and other construction expenses.

## **V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

### **COUNT ONE**

#### **VIOLATIONS OF THE 1981 ORDER AND SECTION 6c OF THE ACT: FRAUD AND SOLICITATION OF AND TRADING OF INVESTOR FUNDS**

27. The allegations set forth in paragraphs 1 through 26 are realleged and incorporated herein by reference.

28. By virtue of the conduct described in paragraphs 16 and 19 through 26 above, Chilcott has violated the 1981 Order by: 1) using the mails or any other means or instrumentalities of interstate commerce, directly or indirectly, to employ a device, scheme or artifice to defraud any person or to engage in a transaction, practice or course of business

which operates as a fraud or deceit upon any person in connection with any commodities transactions; 2) cheating and defrauding, or attempting to cheat and defraud, any person by any means whatsoever, in connection with any order to make or execute, the making or executing, or the confirmation or the execution of contracts of sale of commodities for future delivery; 3) soliciting clients or participants without first distributing a disclosure document in accordance with Regulation 4.21 and 4.22; 4) failing to provide an annual report in accordance with Regulation 4.22; 5) soliciting or accepting any new customer accounts or any new deposits; and 6) directing or causing to be executed trades or contracts on behalf of his customers.

29. Chilcott's activities that constitute violations of the 1981 Order also violate Section 6c of the Act, in that Chilcott has engaged, is engaging, or is about to engage in any act or practice constituting a violation of an order issued under the Act and Regulations.

30. Each violation of the 1981 Order and Section 6c of the Act, including but not limited to those specifically alleged herein, constitutes a separate and distinct violation of the Court's 1981 Order and of Section 6c of the Act.

31. Whidden, by virtue of the conduct described in paragraphs 16 and 19 through 22, 25 and 26 above, and Westbrook, by virtue of the conduct described in paragraphs 22, 25 and 26 above, aided, abetted, counseled, commanded, induced, procured, caused, or acted in combination or concert with Chilcott in the foregoing violations of the 1981 Order and Section 6c of the Act. Whidden and Westbrook are, therefore, liable for Chilcott's violation of the 1981 Order and Section 6c of the Act pursuant to Section 13(a) of the Act.

32. Each act of aiding and abetting, counseling, commanding, inducing, procuring, causing or acting in combination or concert with Chilcott, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of the 1981 Order and Section 6c of the Act, pursuant to Section 13(a) of the Act.

COUNT TWO

VIOLATIONS OF SECTIONS 4b(a)(i) and (iii) OF THE ACT:  
FRAUD IN CONNECTION WITH FUTURES CONTRACTS

33. The allegations set forth in paragraphs 1 through 32 are realleged and incorporated herein by reference.

34. By virtue of the conduct described in paragraphs 20 through 22, 25 and 26 above, Defendants have: (a) cheated or defrauded or attempted to cheat or defraud other persons; and/or (b) willfully deceived or attempted to deceive other persons, in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of any other persons, where such contracts for future delivery were or could be used for the purposes set forth in Section 4b(a) of the Act, 7 U.S.C. § 6b(a), all in violation of Section 4b(a)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(i) and (iii).

35. Each act of misappropriation, and each material misrepresentation or omission made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(i) and (iii) of the Act.

36. Whidden, by virtue of the conduct described in paragraphs 20 through 22, 25 and 26 above, and Westbrook, by virtue of the conduct described in paragraphs 22, 25 and 26, aided, abetted, counseled, commanded, induced, procured, caused, or acted in combination or concert with Chilcott in the foregoing violations Section 4b(a) of the Act. Whidden and Westbrook are, therefore, liable for Chilcott's violations of Section 4b(a) of the Act pursuant to Section 13(a) of the Act.

37. Each act of aiding and abetting, counseling, commanding, inducing, procuring, causing or acting in combination or concert with Chilcott, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(i) and (iii) of the Act, pursuant to Section 13(a) of the Act.

COUNT THREE

VIOLATIONS OF SECTION 4o(1) OF THE ACT:  
FRAUD BY A COMMODITY TRADING ADVISOR

38. The allegations set forth in paragraphs 1 through 37 are realleged and incorporated herein by reference.

39. Beginning in or about September 1999, Chilcott acted as a CTA by, for compensation or profit, advising others, directly or through publications, writings, or electronic media, for the purpose of trading in commodities for future delivery on or subject to the rules of a contract market. Whidden acted as an AP of a CTA by soliciting discretionary clients for the CTA.

40. By virtue of the conduct described in paragraphs 20 and 21 above, Chilcott, while acting as a CTA, and Whidden, while acting as an AP of CTA, employed a device, scheme or artifice to defraud prospective clients and clients, in violation of Section 4o(1)(A) of the Act, 7 U.S.C. § 6o(1)(A).

41. By virtue of the conduct described in paragraphs 20 and 21 above, Chilcott, while acting as a CTA, and Whidden, while acting as an AP of the CTA, engaged in a transaction, practice or course of business which has operated as a fraud or deceit upon prospective clients and clients, in violation of Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B).

42. Each device, scheme or artifice to defraud prospective clients and clients, and each transaction, practice or course of business which has operated as a fraud or deceit upon prospective clients and clients made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4q(1) of the Act.

43. By virtue of the conduct described in paragraphs 20 and 21 above, Whidden willfully aided, abetted, counseled, commanded, induced, procured, caused, or acted in combination or concert with Chilcott in the foregoing violations of Section 4q(1) of the Act. Whidden, therefore, is liable for Chilcott's violation of Section 4q(1) of the Act pursuant to Section 13(a) of the Act.

44. Each act of aiding and abetting, counseling, commanding, inducing, procuring, causing or acting in combination or concert with Chilcott, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4q(1) of the Act, pursuant to Section 13(a) of the Act.

#### COUNT FOUR

##### VIOLATIONS OF SECTION 4q(1) OF THE ACT: FRAUD BY A COMMODITY POOL OPERATOR

45. The allegations set forth in paragraphs 1 through 44 are realleged and incorporated herein by reference.

46. Since in or about September 1999, Chilcott acted as a CPO by soliciting, accepting or receiving funds from others and engaging in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of trading in

commodities for future delivery on or subject to the rules of a contract market. Whidden acted as an AP of a CPO by soliciting Pool participants.

47. By virtue of the conduct described in paragraphs 22, 25 and 26 above, Chilcott, while acting as a CPO, and Whidden, while acting as an AP of CPO, employed a device, scheme or artifice to defraud prospective Pool participants and Pool participants, in violation of Section 4o(1)(A) of the Act, 7 U.S.C. § 6o(1)(A).

48. By virtue of the conduct described in paragraphs 22, 25 and 26 above, Chilcott, while acting as a CPO, and Whidden, while acting as an AP of the CPO, engaged in a transaction, practice or course of business which has operated as a fraud or deceit upon prospective Pool participants and Pool participants, in violation of Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B).

49. Each device, scheme or artifice to defraud prospective Pool participants and Pool participants, and each transaction, practice or course of business which has operated as a fraud or deceit upon prospective Pool participants and Pool participants made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4o(1) of the Act.

50. By virtue of the conduct described in paragraphs 22, 25 and 26 above, Whidden willfully aided, abetted, counseled, commanded, induced, procured, caused, or acted in combination or concert with Chilcott in the foregoing violations of Section 4o(1) of the Act. Whidden is, therefore, liable for Chilcott's violation of Section 4o(1) of the Act pursuant to Section 13(a) of the Act.

51. By virtue of the conduct described in paragraphs 22, 25 and 26 above, Westbrook willfully aided, abetted counseled, commanded, induced, procured, caused, or acted in combination or concert with Chilcott in the foregoing violations of Section 4o(1) of the Act. Westbrook is, therefore, liable for Chilcott's violations of Section 4o(1) of the Act pursuant to Section 13(a) of the Act.

52. Each act of aiding and abetting, counseling, commanding, inducing, procuring, causing or acting in combination or concert with Chilcott, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, pursuant to Section 13(a) of the Act.

#### COUNT FIVE

#### VIOLATIONS OF SECTION 4m(1) OF THE ACT: FAILURE TO REGISTER AS A COMMODITY TRADING ADVISOR

53. The allegations set forth in paragraphs 1 through 52 are realleged and incorporated herein by reference.

54. By virtue of the conduct described in paragraphs 16 through 20, and 23 above, Chilcott used the mails or instrumentalities of interstate commerce in or in connection with its business as a CTA while failing to register as a CTA, in violation of Section 4m(1) of the Act.

55. Each use of the mails or any means or instrumentality of interstate commerce in connection with Chilcott's business as a CTA without proper registration during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act.

56. By virtue of the conduct described in paragraphs 16 through 20 above, Whidden willfully aided, abetted, counseled, commanded, induced, procured, caused, or acted in combination or concert with Chilcott in the foregoing violations of Section 4m(1) of the Act. Whidden is, therefore, liable for Chilcott's violation of Section 4m(1) of the Act pursuant to Section 13(a) of the Act.

57. Each act of aiding and abetting, counseling, commanding, inducing, procuring, causing or acting in combination or concert with Chilcott, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act, pursuant to Section 13(a) of the Act.

#### COUNT SIX

##### VIOLATIONS OF SECTION 4m(1) OF THE ACT: FAILURE TO REGISTER AS A COMMODITY POOL OPERATOR

58. The allegations set forth in paragraphs 1 through 57 are realleged and incorporated herein by reference.

59. By virtue of the conduct described in paragraphs 16 through 19, 22 and 23 above, Chilcott used the mails or instrumentalities of interstate commerce in or in connection with his business as a CPO while failing to register as a CPO, in violation of Section 4m(1) of the Act.

60. Each use of the mails or any means or instrumentality of interstate commerce in connection with Chilcott's business as a CPO without proper registration during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act.

61. Whidden , by virtue of the conduct described in paragraphs 16 through 19, and 22 above, and Westbrook, by virtue of conduct described in paragraph 21 above, willfully aided, abetted, counseled, commanded, induced, procured, caused, or acted in combination or concert with Chilcott in the foregoing violations of Section 4m(1) of the Act. Whidden and Westbrook are, therefore, liable for Chilcott's violation of Section 4m(1) of the Act pursuant to Section 13(a) of the Act.

62. Each act of aiding and abetting, counseling, commanding, inducing, procuring, causing or acting in combination or concert with Chilcott, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act, pursuant to Section 13(a) of the Act.

#### COUNT SEVEN

#### VIOLATIONS OF SECTION 4k(2) OF THE ACT AND REGULATION 3.12: FAILURE TO REGISTER AS AN ASSOCIATED PERSON OF THE CPO

63. The allegations set forth in paragraphs 1 through 62 are realleged and incorporated herein by reference.

64. By virtue of the conduct described in paragraphs 16 through 19, and 22 above, Whidden was associated with a CPO, Chilcott, and involved in the solicitation of funds for participation in a commodity pool while failing to register as an AP of the CPO, in violation of Section 4k(2) of the Act and Regulation 3.12.

65. Chilcott permitted Whidden to become and remain associated with the CPO and knew, or should have known, that Whidden was not registered as an associated person, in violation of Section 4k(2) of the Act.

66. Each solicitation of funds for participation in a commodity pool while failing to register as an AP of the CPO, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4k(2) of the Act and Regulation 3.12.

COUNT EIGHT

VIOLATIONS OF SECTION 4k(3) OF THE ACT AND REGULATION 3.12:  
FAILURE TO REGISTER AS AN ASSOCIATED PERSON OF THE CTA

67. The allegations set forth in paragraphs 1 through 66 are realleged and incorporated herein by reference.

68. By virtue of the conduct described in paragraphs 16 through 20 above, Whidden was associated with a CTA, Chilcott, and involved in the solicitation of funds for discretionary trading accounts while failing to register as an AP of the CTA, in violation of Section 4k(3) of the Act and Regulation 3.12.

69. Chilcott permitted Whidden to become and remain associated with the CTA and knew, or should have known, that Whidden was not registered as an associated person, in violation of Section 4k(3) of the Act.

70. Each solicitation of funds for discretionary trading accounts while failing to register as an AP of the CTA, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4k(3) of the Act and Regulation 3.12.

COUNT NINE

VIOLATIONS OF SECTION 4n(4) OF THE ACT AND REGULATION 4.22:  
FAILURE TO PROVIDE POOL PERIODIC ACCOUNT STATEMENTS

71. The allegations set forth in paragraphs 1 through 70 are realleged and incorporated herein by reference.

72. Chilcott, as a CPO, was required to furnish annual and monthly account statements to Pool participants. By virtue of the conduct described in paragraph 24 above, Chilcott failed to provide any annual or monthly account statements to Pool participants, in violation of Section 4n(4) of the Act and Regulation 4.22.

73. Each failure to provide annual or monthly account statements to Pool participants, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4n(4) of the Act and Regulation 4.22.

#### COUNT TEN

##### VIOLATIONS OF REGULATION 4.21: FAILURE TO PROVIDE POOL DISCLOSURE DOCUMENTS

74. The allegations set forth in paragraphs 1 through 73 are realleged and incorporated herein by reference.

75. Prior to soliciting, accepting or receiving funds, a CPO is required to furnish the pool participant with a written disclosure document containing specific language set forth by regulation. In addition, prior to accepting or receiving funds, a CPO is required to receive from pool participants an acknowledgment signed and dated by the participants that they received and understood the disclosure document.

76. By virtue of the conduct described in paragraph 24 above, Chilcott failed to furnish pool participants with a written disclosure document and failed to receive signed and dated acknowledgments from the pool participants stating that they received and understood the disclosure document, all in violation of Regulation 4.21.

77. Each failure to provide pool participants with a disclosure document and obtain signed and dated acknowledgements from the pool participants, including but not

limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.21.

COUNT ELEVEN

VIOLATIONS OF REGULATION 4.31:  
FAILURE TO PROVIDE CTA CLIENTS WITH DISCLOSURE DOCUMENTS

78. The allegations set forth in paragraphs 1 through 77 are realleged and incorporated herein by reference.

79. Prior to soliciting a prospective client, or entering into an agreement with a prospective client, a CTA is required to deliver or cause to be delivered to the prospective client a Disclosure Document, containing the information set forth in the regulations.

80. By virtue of the conduct described in paragraph 24 above, Chilcott failed to furnish prospective clients with a disclosure document, in violation of Regulation 4.31.

81. Each failure to furnish prospective clients with a disclosure document, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.31.

COUNT TWELVE

VIOLATIONS OF REGULATION 4.20:  
CPO FAILURE TO TREAT THE POOL AS A SEPARATE ENTITY,  
ACCEPTING FUNDS IN ITS OWN NAME AND COMMINGLING FUNDS

82. The allegations set forth in paragraphs 1 through 81 are realleged and incorporated herein by reference.

83. As described in paragraphs 17 through 18, and 22 above, Chilcott failed to operate the Pool as a legal separate entity, in violation of Regulation 4.20(a).

84. As described in paragraph 22 above, Chilcott, while operating as a CPO, accepted Pool funds other than in the name of the Pool, in violation of Regulation 4.20(b).

85. As described in paragraph 22 above, Chilcott, while operating as a CPO, commingled the funds of the Pool with the funds of other persons, in violation of Regulation 4.20(c).

86. Each failure to operate the Pool as a legal separate entity, acceptance of Pool funds in the name other than the Pool, and commingling of Pool funds with the funds of other persons, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4.20 of the Act.

87. Whidden, by virtue of the conduct described in paragraphs 17 and 22 above, and Westbrook, by virtue of conduct described in paragraph 22 above, willfully aided, abetted, counseled, commanded, induced, procured, caused, or acted in combination or concert with Chilcott in the foregoing violations of Section 4.20 of the Act. Whidden and Westbrook are, therefore, liable for Chilcott's violation of Regulation 4.20 pursuant to Section 13(a) of the Act.

88. Each act of aiding and abetting, counseling, commanding, inducing, procuring, causing or acting in combination or concert with Chilcott, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.20, pursuant to Section 13(a) of the Act.

## VI. RELIEF REQUESTED

WHEREFORE, the Commission, respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers, enter:

- a) a permanent injunction prohibiting the Defendants and any other person or entity associated with them, including any successor thereof, from engaging in conduct violative of the 1981 Order and Sections 4b(a)(i) and (iii), 4o(1), 4k(2) and (3), 4m(1), 4n(4), 6c and 13(a) of the Act and Sections 3.12, 4.20, 4.21, 4.22 and 4.31 of the Commission's Regulations, and from engaging in any commodity-related activity, including soliciting new clients or client funds or new pool participants or pool funds;
- b) an order directing the Defendants to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act or Regulations, as described herein, and interest thereon from the date of such violations;
- c) an order directing the Defendants to make full restitution to every customer whose funds were received by them as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;
- d) a civil penalty against each Defendant in the amount of not more than the higher of \$110,000 or triple the monetary gain to the Defendant for each violation by the Defendant of the Act or Regulations prior to October 23, 2000, and not more than the higher of \$120,000 or triple the monetary gain to the Defendant for each violation by the Defendant of the Act or Regulations on or after October 23, 2000; and
- e) such other and further remedial ancillary relief as the Court may deem appropriate.

Respectfully Submitted,

Date: March 6, 2002

ATTORNEYS FOR PLAINTIFF:

COMMODITY FUTURES TRADING  
COMMISSION

Division of Enforcement  
1155 21st Street, N.W.  
Washington, D.C. 20581

(202) 418-5466 (Saler)  
(202) 418-5371 (Smith)  
(202) 418-5312 (Hayeck)  
(202) 418-5531 facsimile

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Leanna L. Saler, Esq.  
Trial Attorney

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Eugene B. Smith, Esq.  
Trial Attorney

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Paul G. Hayeck, Esq.  
Senior Trial Attorney