

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

---

<b>In the Matter of</b>	:
	:
	:
<b>Systems of Success-Window to Profit,</b>	<b>: CFTC Docket No. 00-27</b>
	:
<b>Bernadette Flavell a/k/a Bernadette Viele,</b>	<b>:</b>
	<b>: Administrative Law Judge</b>
<b>Richard Viele,</b>	<b>: Bruce C. Levine</b>
	:
<b>-and-</b>	:
	:
<b>Kevin Kates,</b>	<b>: ORDER MAKING FINDINGS AND</b>
	<b>: IMPOSING REMEDIAL SANCTIONS</b>
	<b>: AS TO RESPONDENTS SYSTEMS OF</b>
	<b>: SUCCESS AND FLAVELL</b>
<b>Respondents.</b>	:
	:

---

**I.**

On September 6, 2000 the Commodity Futures Trading Commission (the "Commission") filed a Complaint and Notice of Hearing against Systems of Success-Window to Profit ("SOS"), Bernadette Flavell a/k/a Bernadette Viele ("Flavell"), Richard Viele ("Viele") and Kevin Kates ("Kates") (collectively the "Respondents"). The two-count Complaint alleged that the Respondents violated Sections 4b(a)(i) and (iii) and 4o(1)(A) and (B) of the Commodity Exchange Act, 7 U.S.C. §§ 6b(a)(i) and (iii) and 6o(1)(A) and (B) (1994), as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. No. 106-554 (2000), ("the Act"), and Sections 4.41(a) and (b) of the Commission's Regulations ("Regulations"), 17 C.F.R. §§ 4.41(a) and (b) (2001).

**II.**

In order to dispose of the allegations and issues raised in the Complaint, SOS and Flavell each has submitted an Offer of Settlement ("Offer" or "Offers"), which the Commission has determined to accept. Without admitting or denying any of the allegations of the Complaint or the findings of fact in the Order Making Findings and Imposing Remedial Sanctions ("Order"), and prior to any adjudication on the merits, SOS and Flavell acknowledge service of the Order and consent to the use of the findings in

this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.<sup>1</sup>

### III.

The Commission finds the following:

#### A. SUMMARY

Flavell, a CTA registered since June 4, 1998, and SOS, a non-registered corporation, defrauded clients and prospective clients through material misrepresentations in newspaper advertisements and written promotional materials regarding SOS's commodity futures trading systems from September 1996 until January 1999. In addition, Flavell and SOS made material misrepresentations to their clients and prospective clients about the profit potential and risk associated with futures trading. Flavell and SOS's fraudulent solicitations presented performance results for various trading systems as actual performance results when, in fact, all such results were hypothetical. Moreover, Flavell and SOS failed to provide the required cautionary statement explaining the inherent limitations of hypothetical performance results.

#### B. RESPONDENTS SOS, FLAVELL AND VIELE

##### 1. Settling Respondents

**Systems of Success-Windows to Profits, Inc.**, is an inactive Nevada corporation. Its principal place of business was at 9947 NW 45th Street, Coral Springs, Florida 33065. It also was incorporated in Florida in 1997 as "Systems of Success-Windows to Profit." SOS has never been registered with the Commission in any capacity.

**Bernadette Flavell, a/k/a Bernadette Viele**, resides at 9947 NW 45th Street, Coral Springs, Florida 33065. She has been registered as a CTA since June 4, 1998.

##### 2. Deceased Respondent

**Richard Viele** also resided at 9947 NW 45th Street, Coral Springs, Florida 33065. He was never registered with the Commission in any capacity. He represented that he was the owner of SOS and "Profit Educational Services" on two separate applications to register those names with the State of Florida on October 21, 1997. In separate incorporation

---

<sup>1</sup> SOS and Flavell do not consent to the use of the Offer or this Order, or the findings to which they have consented in the Offer, as the sole basis for any other proceeding brought by the Commission other than a proceeding to enforce the terms of this Order. They do not consent to the use of the Offer or this Order, or the findings to which they have consented in his Offer, by any other person or entity in this or any other proceeding. The findings to which they have consented in the Offer, as contained in this Order, are not binding on any other person or entity named as a respondent or defendant in this or in any other proceeding.

articles filed with the Nevada Secretary of State on December 30, 1997, Viele was listed as the sole member of the board of directors of both entities. Viele died on April 21, 2002.

### **C. FACTS**

Between September 1996 and January 1999, SOS and Flavell fraudulently marketed the SOS commodity futures trading systems developed by Viele. In newspaper advertisements, written promotional materials and during workshops that they conducted, SOS and Flavell made material misrepresentations regarding profitability and reliability of the various SOS systems, presented hypothetical trading results as actual trading results and failed to provide the required cautionary statement explaining the inherent limitations of hypothetical performance results. SOS and Flavell made money based upon varying fees charged to their clients for the SOS systems and workshops.

SOS and Flavell placed advertisements for the SOS trading systems and workshops in Investor's Business Daily ("IBD") and shared the attendant costs. The advertisements in IBD claimed or implied that SOS' systems had a very high probability of profits and made claims regarding the magnitude of profits. For example, advertisements claimed between 97% and 99% accuracy and several advertisements claimed to "make \$1.2 Million in 1 year." The advertisements' disclaimer language and warnings, when they did appear at all, were insufficient to adequately caution prospective subscribers about the risks inherent in trading. From at least December 9, 1996 through March 24, 1997, the advertisements failed to include the disclaimer regarding hypothetical results required by Section 4.41(b)(1) of the Regulations. Advertisements for SOS' systems also falsely stated that claimed profit percentages and dollar figures were based on actual trading. These advertisements implied that all of the claims made were substantiated by "actual" or "real" results experienced by actual people when trading according to the SOS systems, but, in fact, they were not. Rather, these "results" were hypothetical.

As part of the marketing scheme, Flavell promoted SOS' systems and its workshops to prospective clients who called in response to the advertisements. Flavell distributed SOS spreadsheets to prospective customers and workshop attendees denoting the various systems' track records which falsely presented hypothetical trading as actual, and failed to present trades that had resulted in losses. Some of these track records were labeled "Actual Trading Results for S&P SYS 1." Some of these track records included a summary page that noted "[r]esults are based on actual trades." In addition, some track records included "disclosure" statements that indicated that the track records were based on "past performance." Consistent with the claims made in the SOS advertisements, the track records for the particular systems reflected that virtually all of those systems' trades were profitable.

Flavell stated or implied in her solicitation efforts that the track records consisted of actual trades. Flavell used the word "results" in titling the track records, without indicating that they were hypothetical or simulated performance results, and sometimes used the term "actual" to describe the trading results. In some materials sent to clients,

Flavell either failed to include the required cautionary statement regarding the limitations of hypothetical performance results or did not include it on the same page as the track record.

Although the promotional material and track records made representations of consistent daily and net monthly profits, individuals who subscribed to the SOS systems lost money in as early as October 1996, and customers never experienced the monthly net profits listed in the track records. The claimed results reflected in the track records varied substantially from SOS' clients' actual results. On dates when some accounts lost money while other accounts made varying amounts of profit, the track record only reflects that there was a winning trade with one specific profit amount listed. When many of SOS' clients suffered trading losses trading according to the SOS system on particular dates, those dates do not appear in the track records.

Flavell knew that the track records they disseminated to potential clients and workshop attendees did not accurately reflect the performance of the SOS systems. During October 1996, Viele lost money while trading his own account; however his trading results are either omitted from the track records or are skewed to reflect that a profit was made. Additionally, a comparison of track records for the same system during the same time period distributed by Flavell and SOS to different prospective customers reflects variations in the result and the profit made.

Flavell further misled clients by representing that Systems of Success was registered with the Commission. In a letter on Systems of Success letterhead, addressed to subscribers and received sometime after April 1997 by at least one workshop participant, Flavell stated "[a]s you are aware, Systems of Success is currently registered with the Commodity Futures Trading Commission as a Commodity Trading Advisor." Yet Systems of Success has never been registered with the Commission in any capacity.

## **D. LEGAL DISCUSSION**

### **SOS and Flavell, While Acting as CTAs, Violated Section 4q(1)(A) and (B) of the Act and Section 4.41(a) and (b) of the Regulations**

#### **a. Violations of Section 4q(1) of the Act**

Section 4q(1) of the Act prohibits a CTA from, by use of the mails or any means or instrumentality of interstate commerce, (A) employing any device, scheme, or artifice to defraud any client or prospective client, or from (B) engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. Section 4q prohibits both registered and unregistered CTAs from defrauding their clients.<sup>2</sup>

---

<sup>2</sup> *CFTC v. Savage, supra* at 270 (court held that it is clear that persons required to be registered are subject to Section 4q even if they are not registered).

Under Section 1a(5) of the Act, to establish that someone is a CTA, it must be shown that the person (1) advised another about the value or advisability of trading in futures contracts, (2) either directly or through publications, writings or electronic media, (3) for compensation or profit.<sup>3</sup>

SOS and Flavell's activities plainly fit within the Commission's definition of a CTA. SOS and Flavell directly advised others as to the advisability of trading futures through the use of SOS's systems. In addition, SOS and Flavell made SOS's advice available directly, through telephone hotlines and did so for compensation or profit based on fees charged to their clients.

Misrepresentations and omissions of material facts regarding options transactions violate the antifraud proscriptions of the Act.<sup>4</sup> A statement is material if it is substantially likely that a reasonable investor would consider the matter important in making an investment decision.<sup>5</sup> 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.<sup>6</sup>

The IBD advertisements disseminated by SOS and Flavell contained material misrepresentations and omissions regarding the risk of loss and probability of profit associated with trading futures using SOS's system. These advertisements and the promotional materials that SOS and Flavell disseminated were intended by them to and did give the misleading impression that the claims of past success of the systems were based on actual trading, when they were based only on hypothetical trading results. In providing track records to clients and prospective clients, SOS and Flavell either implied or stated that these track records consisted of actual results. The Commission has

---

<sup>3</sup> One of the exclusions from this definition includes magazine or newspaper articles that "dispense investment advice," and is designed to protect incidental publishers of advice but not publishers who specifically concentrate on commodities advice. *R&W v. CFTC*, *supra*, at 172-173. This exclusion is not applicable here.

<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> *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).

consistently held that misrepresentations of hypothetical trading results as actual trading results violate Section 4o of the Act.<sup>7</sup>

The track records are replete with misrepresentations. The track records either omit dates and trading results entirely or list dates and doctor the corresponding results where clients traded according to SOS's system and lost money while other clients traded according to SOS's system and made varying amounts of profit. These facts constitute further evidence that the representations made to clients and prospective clients in the track records were manipulated. Further, SOS and Flavell knew that their clients were suffering losses that would skew the "actual" track records. Thus, SOS and Flavell knew that some losing-trade dates were ignored and others were removed from the track records or changed to show a profit rather than an actual loss. SOS and Flavell also knew that some profitable trades were altered to show an even greater profit than had been obtained by the actual users of SOS's system. SOS and Flavell's failure to disclose this material information violates Section 4o of the Act.

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).<sup>8</sup> Under 4o(1)(B), a respondent is liable if his actions "operate as a fraud" even if that was not the respondent's intent.<sup>9</sup> SOS and Flavell engaged in their fraudulent activities in order to convince clients and prospective clients that SOS's systems were profitable when, in fact, they knew that the opposite was true. SOS and Flavell used the term "results," and sometimes "actual results" in the track record they disseminated to clients and prospective clients when they knew that the track record was actually composed of only a selection of trading results. SOS and Flavell knew that no one traded according to SOS's systems on every date reflected in the track records because on some occasions, they generated the signals after the date and added that signal to the track record. SOS and Flavell also knew that at least one of their clients suffered significant losses while trading the system that were not reflected at all in the track record. Thus, SOS and Flavell acted with scienter and, therefore, violated Section 4o(1)(B) of the Act.<sup>10</sup>

#### **b. Violations of Section 4.41(a) and (b) of the Regulations**

Section 4.41(a) of the Regulations prohibits a CTA from advertising in a manner which (1) employs any "device, scheme or artifice to defraud any ... client or prospective ... client" or (2) involves any "transaction, practice or course of business which operates

---

<sup>7</sup>*Id.*, at 933; *In re Armstrong* [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,332 at 42,612 (CFTC March 13, 1995); *Maynard v. Cycle System Index, Inc.*, [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,429 at 26,068-69 (CFTC April 30, 1982).

<sup>8</sup> *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).

<sup>9</sup> *Id.*

<sup>10</sup> *In the Matter of JCC, Inc. et al.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,080 at 41,576-77 (CFTC May 12, 1994), *aff'd sub nom. JCC Inc. v. CFTC*, 63 F.3d 1557 (11<sup>th</sup> Cir. 1995); *Refco v. Levine, supra* at 36,115.

as a fraud or deceit upon any ... client or any prospective ... client.” The Commission has held that Section 4.41(a) of the Regulations is violated when advertisements depict hypothetical trading results as actual trading results.<sup>11</sup> The SOS advertisements incorporating the purported results of trading according to SOS’s signals that violate Section 4.41(a) of the Act also violate Section 4.41(a) of the Regulations.

Regulation 4.41(b)(1) specifically requires that any advertisement presenting hypothetical performance results of a CTA must prominently display a cautionary statement alerting clients and prospective clients to the limitations inherent in hypothetical performance results. The Section 4.41(b)(1) disclaimer serves to “alert clients to the limited predictive value” of hypothetical performance results, and the failure to include the cautionary statement in advertisements touting hypothetical performance results violates Section 4.41(b).<sup>12</sup>

While SOS and Flavell attached general warnings to some of the track records that they supplied to clients and prospective clients, these warnings did not inform clients and prospective clients that the results were hypothetical and of limited predictive value and did not conform to the warnings specifically required by Regulation 4.41(b)(1). SOS and Flavell, therefore, are liable for violating Section 4.41(b).

#### IV.

#### OFFER OF SETTLEMENT

SOS and Flavell have submitted Offers in which they neither admit nor deny the allegations in the Complaint or the findings in the Order. Subject to the foregoing, SOS and Flavell acknowledge service of the Complaint and of this Order and admit the jurisdiction of the Commission with respect to the matters set forth in the Complaint and the Order. SOS and Flavell waive: (1) a hearing and all posthearing procedures; (2) judicial review by any court; (3) any objection to the staff’s participation in the Commission’s consideration of the Offer; (4) 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. 862-863, and Part 148 of the Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2001), relating to, or arising from, this action, and any right under the Equal Access to Justice Act to seek costs, fees, or other expenses relating to, or arising from, this proceeding; and (5) 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.

SOS and Flavell stipulate that the record basis on which this Order is entered consists solely of the Complaint and the Order and the findings to which they have consented in the Offer, which are incorporated in this Order. SOS and Flavell consent to

---

<sup>11</sup> *In re Armstrong*, *supra* ¶ 26,332 at 42,611-112.

<sup>12</sup> *Id.* ¶ 26,332 at 42,612; *CFTC v. Skorupskas*, *supra*, at 933, n.21.

the Commission's entry of this Order, which makes findings as set forth herein, and orders that SOS and Flavell:

- 1) cease and desist from violating the provisions of the Act and the Regulations that they have been found to have violated;
- 2) comply with the undertakings as set forth in the Offer and incorporated in this Order; and
- 3) pay a contingent civil monetary penalty ("CMP") of up to \$50,000 pursuant to a ten-year payment plan, for which they shall be jointly and severally liable.

In addition, SOS further consents to the Commission's entry of this Order which orders that SOS be permanently prohibited from trading on or subject to the rules of any registered entity and be refused all privileges by all registered entities effective upon entry of this Order.

Lastly, Flavell further consents to the Commission's entry of this Order which orders that Flavell be prohibited from trading on or subject to the rules of any registered entity, and that all registered entities refuse her all privileges effective upon entry of this Order and continuing for a period of two years.

## V.

### FINDINGS OF VIOLATIONS

Solely on the basis of SOS and Flavell's consent evidenced in the Offer, without admitting or denying any of the allegations of the Complaint or the findings in this Order, and prior to any adjudication on the merits, the Commission finds that SOS and Flavell violated Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B) (1994), and Sections 4.41(a) and (b) of the Regulations, 17 C.F.R. §§ 4.41(a) and (b) (2001).

## VI.

### ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. SOS and Flavell shall cease and desist from violating Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B) (1994), and Sections 4.41(a) and (b) of the Regulations, 17 C.F.R. §§ 4.41(a) and (b) (2001);
- B. Flavell shall be prohibited from trading on or subject to the rules of any registered entity and all registered entities shall refuse Flavell all privileges thereon for a period of two years;

- C. SOS shall be permanently prohibited from trading on or subject to the rules of any registered entity and all registered entities shall refuse SOS all privileges thereon;
- D. Flavell's registration as a CTA shall be revoked;
- E. SOS and Flavell shall pay a CMP in an amount of up to \$50,000, pursuant to a ten-year payment plan, for which they shall be jointly and severally liable, as provided in subparagraph D below. SOS and Flavell shall make an annual civil monetary penalty payment ("Annual CMP Payment"), as calculated by a monitor designated by the Commission (the "Monitor"),<sup>13</sup> on or before July 31 of each calendar year, starting in calendar year 2003 and continuing for ten years until 2012 (or until the civil monetary penalty is paid in full, if that happens first).<sup>14</sup> SOS and Flavell shall make each such Annual CMP Payment by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies SOS and Flavell and the name and docket number of the proceeding; SOS and Flavell shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor and to the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581; and
- F. The amount of SOS and Flavell's Annual CMP Payment, to be made pursuant to subparagraph C above, shall consist of a portion of: (1) the adjusted gross income (as defined by the Internal Revenue Code) earned or received by SOS and Flavell during the course of the preceding calendar year, plus (2) all other net cash receipts, net cash entitlements or net proceeds of non-cash assets (collectively "Net Cash Receipts")

---

<sup>13</sup> SOS and Flavell agree that the National Futures Association is hereby designated as the Monitor for a period of ten years commencing as of the date of the entry of the Order. Notice to the Monitor shall be made to Daniel A. Driscoll, Esq., Executive Vice President, Compliance, or his successor, at the following address: National Futures Association, 200 West Madison Street, Chicago, IL 60606.

<sup>14</sup> SOS and Flavell's ten-year CMP period shall run from January 1, 2002 through December 31, 2011. Annual CMP payments for a calendar year shall take place by July 31 of the following year. Therefore, the final Annual CMP payment, for the year 2011, will be due on or before July 31, 2012. For ten years, based on the information contained in SOS and Flavell's sworn financial statements, SOS and Flavell's tax returns and other financial statements and records provided to the Monitor, the Monitor shall calculate the total amount of the civil monetary penalty to be paid by SOS and Flavell for that year. On or before June 30 of each year and starting in the calendar year 2003 and concluding in the calendar year 2012, the Monitor shall send written notice to SOS and Flavell with instructions to pay by no later than July 31 of that year the amount of the civil monetary penalty pursuant to the payment instructions provided in subparagraph D above.

received by SOS and Flavell during the course of the preceding calendar year. The Annual CMP Payment will be determined as follows:

<b>Where Adjusted Gross Income Plus Net Cash Receipts Total:</b>	<b>Percent of Total to be Paid by SOS and Flavell is:</b>
Up to \$25,000	0%
\$25,000 to \$50,000	20% of the amount above \$25,000
\$50,000-\$100,000	\$5,000 (=20% of the amount above \$25,000) <u>PLUS</u> 30% of the amount above \$50,000
Above \$100,000	\$5,000 (=20% of the amount above \$25,000) <u>PLUS</u> \$15,000 (=30% of the amount above \$50,000) <u>PLUS</u> 40% of the amount above \$100,000;

- G. In the event that SOS and Flavell do not make payments as directed in paragraphs C and D, *supra*, the Commission may bring a proceeding or an action to enforce compliance with this Order and at its option may seek payment of the unpaid Annual CMP Payments, or immediate payment of the entire amount of civil monetary penalty required by paragraphs C and D, *supra*. The only issue that SOS and Flavell may raise in defense of such enforcement action is whether they have made the Annual CMP Payments as directed by the Monitor. Any action or proceeding brought by the Commission compelling payment of the Annual CMP Payments, due and owing pursuant to paragraphs C and D, *supra*, or any portion thereof, or any acceptance by the Commission of partial payment of the Annual CMP Payments made by SOS and Flavell, shall not be deemed a waiver of SOS and Flavell's obligation to make further payments pursuant to the payment plans, or a waiver of the Commission's right to seek to compel payment of the remaining balance of the civil monetary penalty assessed against SOS and Flavell;
- H. The Commission notes that an order requiring immediate payment of a civil monetary penalty against SOS and Flavell would be appropriate in this case, but does not impose it based upon SOS and Flavell's financial condition. SOS and Flavell acknowledge that the Commission's acceptance of the Offer is conditioned upon the accuracy and

completeness of the sworn Financial Statements and other evidence they have provided regarding their financial condition. SOS and Flavell consent that if at any time following the entry of this Order, the Division of Enforcement (the "Division") obtains information indicating that representations concerning their financial condition was fraudulent, misleading, inaccurate, or incomplete in any material respect at the time it was made, the Division may, at any time following the entry of the Order, petition the Commission to: (1) reopen this matter to consider whether SOS and Flavell provided accurate and complete financial information at the time such representations were made; (2) require immediate payment of the full amount of the civil monetary penalty, required by paragraphs C and D, *supra*; and (3) seek any additional remedies that the Commission would be authorized to impose in this proceeding if SOS and Flavell's Offers had not been accepted. No other issues shall be considered in connection with this petition other than whether the financial information provided by SOS and Flavell was fraudulent, misleading, inaccurate, or incomplete in any material respect, and whether any additional remedies should be imposed. SOS and Flavell may not, by way of defense to any such petition, contest the validity of, or the findings in, the Order, assert that payment of a civil monetary penalty should not be ordered, or contest the amount of the civil monetary penalty to be paid. If in such proceeding, the Division petitions for, and the Commission orders, payment of less than the full amount of the civil monetary penalty, such petition shall not be deemed a waiver of SOS and Flavell's obligation to pay the remaining balance of the civil monetary penalty assessed against SOS and Flavell pursuant to the payment plans; and

- I. SOS and Flavell shall comply with their undertakings as set forth in Section III of the Offer, as follows:
  1. SOS and Flavell shall provide sworn financial statements to the Monitor on June 30 and December 31 of each calendar year, starting June 30, 2002 and continuing through and including June 30, 2011. The financial statements shall provide:
    - (a) a true and complete itemization of all of SOS and Flavell's rights, title and interest in (or claimed in) any asset, wherever, however and by whomever held;
    - (b) an itemization, description and explanation of all transfers of assets with a value of \$1,000 or more made by or on behalf of SOS and Flavell over the preceding six-month interval; and

- (c) a detailed description of the source and amount of all of SOS and Flavell's income or earnings over the preceding six-month interval, however generated.
- 2. SOS and Flavell shall also provide the Monitor with complete copies of their signed federal income tax returns (for the previous calendar year), including all schedules and attachments thereto (e.g., IRS Forms W-2) and Forms 1099, as well as any filings they are required to submit to any state tax or revenue authority (collectively "tax filings"), on or before June 30 of each calendar year, or as soon thereafter as the same are filed, beginning in 2003 and ending in 2012. If in any year beginning in 2003 and ending in 2012 SOS or Flavell does not file any tax filings, SOS or Flavell shall provide a sworn affidavit stating that fact to the Monitor on or before June 30 of that calendar year. If SOS and Flavell move their residences or business at any time, they shall provide written notice of their new address to the Monitor and the Commission within ten (10) days thereof. If, during the same time period, SOS and Flavell elect to file a joint tax return, they shall provide all documents called for by in this subparagraph, including the signed and filed joint tax return, plus a draft individual tax return prepared on IRS form 1040 containing a certification by a licensed certified public accountant that the "Income" section (currently lines 7-22 of the form 1040) truly, accurately, and completely reflects all of their income, that the "Adjusted Gross Income" section (currently lines 23-33 of the form 1040) truly, accurately, and completely identifies all deductions that they have a right to claim, and that the deductions contained in the "Adjusted Gross Income" section are equal to or less than 50% of the deductions that they are entitled to claim on the joint tax return; provided, however, that SOS and Flavell may claim 100% of the deductions contained in the "Adjusted Gross Income" section that are solely theirs. Such individual tax return shall include all schedules and attachments thereto (e.g., IRS Forms W-2) and Forms 1099, as well as any filings required to be submitted to any state tax or revenue authority;
- 3. SOS and Flavell shall cooperate fully and expeditiously with the Monitor and the Commission in carrying out all aspects of their Annual CMP Payments. They shall cooperate fully with the Monitor and the Commission in explaining their financial income and earnings, status of assets, financial statements, asset transfers, tax returns, and shall provide any information concerning them as may be required by the Commission. Furthermore, SOS and Flavell shall provide such additional information and documents

with respect thereto as may be requested by the Monitor or the Commission;

4. SOS and Flavell shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any member of SOS and Flavell's family or any other person for the purpose of concealing such funds or property from the Monitor or the Commission;
5. SOS and Flavell shall never apply for registration or seek exemption from registration with the Commission in any capacity and shall never engage in any activity requiring such registration or exemption from registration, except as provided for in Section 4.14(a)(9) of the Commission's Regulations, 17 C.F.R. § 4.14(a)(9) (2001), or act as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration, unless such exemption is pursuant to Section 4.14(a)(9) of the Commission's Regulations, 17 C.F.R. § 4.14(a)(9) (2001); and
7. Neither SOS, Flavell, nor any of their agents or employees under their authority or control, shall take any action or make any public statements denying, directly or indirectly, any allegation in the Complaint or findings or conclusions in the Order, or creating, or tending to create, the impression that the Complaint or Order is without a factual basis; provided, however, that nothing in this provision shall affect SOS and Flavell's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party.

The provisions of this Order shall be effective on this date.

BY THE COMMISSION.

Dated: July 11, 2002

\_\_\_\_\_  
Jean A. Webb  
Secretary to the Commission  
Commodity Futures Trading Commission