

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION**

COMMODITY FUTURES TRADING COMMISSION,	)	Case No.
	)	2:02-cv-94-FTM-29DNF
Plaintiff,	)	
	)	
v.	)	
	)	
THOMAS D. CHILCOTT d/b/a Trade Master of	)	
Southwest Florida, TED E. WHIDDEN, and LEONA	)	
WESTBROOK,	)	
	)	
Defendants.	)	
	)	
	)	

**CONSENT ORDER OF PERMANENT INJUNCTION,  
THE APPOINTMENT OF A RECEIVER, AND OTHER EQUITABLE  
RELIEF AS TO DEFENDANT TED E. WHIDDEN**

On March 6, 2002, Plaintiff Commodity Futures Trading Commission ("the Commission") filed a complaint against Thomas D. Chilcott ("Chilcott"), Leona Westbrook ("Westbrook"), and Ted E. Whidden ("Whidden") (collectively "Defendants") seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 *et seq.* (1994), the Commission regulations promulgated thereunder ("Regulations"), 17 C.F.R. §§ 1 *et seq.* (2001), and the Consent Final Judgment and Order of Permanent Injunction and Equitable Relief of the United States District Court for the District of Colorado in Commodity Futures Trading Commission v. Chilcott Portfolio Mgmt, Inc., et. al., C.A. No. 81-F-999, Order No. 1981-9 (D. Colo. July 10, 1981) (the "1981 Order").

On March 7, 2002, this Court issued an *ex parte* statutory restraining order ("Statutory Restraining Order") that, among other things, froze the Defendants' assets, prohibited Defendants from destroying any books and records, and scheduled a hearing of the Commission's request for a preliminary injunction. On March 18, 2002, this Court issued a preliminary injunction prohibiting

the Defendants from violating the Act, Regulations, and the 1981 Order as alleged in the Complaint. On March 19, 2002, the Court modified the Statutory Restraining Order.

On March 29, 2002, the Commission moved this Court to issue an order appointing a receiver for the Defendants and the operation of Trade Master of Southwest Florida (“Trade Master”), which Defendant Whidden did not oppose. The Commission and Defendant Whidden have subsequently consented and agreed to the terms and provisions set forth herein for the appointment of a receiver (“Receiver”).

## **I. CONSENTS AND AGREEMENTS**

1. To effect settlement of the matters alleged in the Complaint in this action without a trial on the merits or any further judicial proceedings, Whidden consents to the entry of this Consent Order of Permanent Injunction, the Appointment of a Receiver, and Other Equitable Relief (“Order”).

2. Whidden admits that this Court has jurisdiction over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. §13a-1 (1994).

3. Whidden admits that venue properly lies with this Court pursuant to Section 6c of the Act.

4. In addition, Whidden waives: (a) all claims which he 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, §§ 231-32, 110 Stat. 862-63, and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1 et seq., to seek costs, fees and other expenses relating to, or arising from, this action; (b) the entry of findings of fact and conclusions of law in this action as provided by Rule 52 of the Federal Rules of Civil Procedure, except as provided below in Section II; (c) 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; and (d) all rights of appeal from this Order.

5. Whidden agrees that neither he nor any of his agents, servants, employees, contractors or attorneys shall take any action or make any public statement 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 this Order is without a factual basis; provided, however, that nothing in this provision shall affect Whidden's (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. Whidden shall take all necessary steps to ensure that all of his agents, servants, employees, contractors and attorneys understand and comply with this agreement.

6. Whidden agrees that he has read this Order and agrees to this Order voluntarily and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein.

7. Whidden consents to the continued jurisdiction of this Court in order to implement and carry out the terms of all orders and decrees that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and to assure compliance with the Order.

8. The Court, being fully advised in these premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of findings of fact and conclusions of law, a permanent injunction, the appointment of a receiver, and other equitable relief pursuant to § 6c of the Act, as set forth herein.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

1. This Court has jurisdiction over the subject matter of this action and all parties hereto pursuant to Section 6c of the Act, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such 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 thereunder.
2. Venue properly lies with this Court pursuant to Section 6c of the Act.
3. This Court has personal jurisdiction over Whidden, who has acknowledged service of the Complaint and consented to the Court's jurisdiction.
4. The Commission and Whidden have agreed to this Court's retention of continuing jurisdiction over Whidden for the purpose of enforcing terms of this Order.

## **III. ORDER FOR PERMANENT INJUNCTION**

### **NOW THEREFORE, IT IS ORDERED THAT:**

1. Whidden, and all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of Whidden, and all persons insofar as they are acting in active concert or participation with Whidden, who receive actual notice of this Order by personal service or otherwise, shall be permanently restrained, enjoined and prohibited from directly or indirectly:
  - A. violating the provisions of the 1981 Order and Section 6c of the Act;
  - B. in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other persons, where such contract for future delivery was or could be used for (a) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such

commodity sold, shipped, or received in interstate commerce for the fulfillment thereof,

- i. cheating or defrauding or attempting to cheat or defraud such other persons; and
- iii. willfully deceiving or attempting to deceive such other persons;

all in violation of Section 4b(a)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(i) and (iii)(1994);

C. while acting as a Commodity Pool Operator (“CPO”) as defined by Section 1a(5) of the Act, or as an Associated Person (“AP”) of a CPO, employing a device, scheme or artifice to defraud participants or prospective participants by use of the mails or any means or instrumentality of interstate commerce directly or indirectly, all in violation of Section 4q(1)(A) of the Act, 7 U.S.C. §6q(1)(A) (1994);

D. while acting as a CPO, or an AP of a CPO, engaging in a transaction, practice or course of business which operates as a fraud or deceit upon participants or prospective participants by use of the mails or any means or instrumentality of interstate commerce directly or indirectly, all in violation of Section 4q(1)(B) of the Act, 7 U.S.C. § 6q(1)(B) (1994);

E. while acting as a Commodity Trading Advisor (“CTA”) as defined by Section 1a(6) of the Act, or as an AP of a CTA, employing a device, scheme or artifice to defraud clients or prospective clients by use of the mails or any means or instrumentality of interstate commerce directly or indirectly, all in violation of Section 4q(1)(A) of the Act;

F. while acting as a CTA, or an AP of a CTA, engaging in a transaction, practice or course of business which operates as a fraud or deceit upon clients or prospective clients by use of the mails or any means or instrumentality of interstate commerce directly or indirectly, all in violation of Section 4q(1)(B) of the Act;

G. using the mails or any means or instrumentalities of interstate commerce in or in connection with any business as a CTA while failing to register as a CTA, all in violation of Section 4m(1) of the Act, 7 U.S.C §6m(1) (1994);

H. using the mails or any means or instrumentalities of interstate commerce in or in connection with any business as a CPO while failing to register as a CPO, all in violation of Section 4m(1) of the Act;

I. while being associated with a CPO as a partner, officer, employee, consultant, or agent, in any capacity that involves (i) the solicitation of funds, securities, or property for the participation in a commodity pool or (ii) the supervision of any person or persons so engaged, without being registered as an AP of the CPO, all in violation of Section 4k(2) of the Act, 7 U.S.C §6k(2) (1994) and Section 3.12 of the Regulations, 17 C.F.R. § 3.12 (2001);

J. while being associated with a CTA as a partner, officer, employee, consultant, or agent, in any capacity that involves (i) the solicitation of a client's or prospective client's discretionary account or (ii) the supervision of any person or persons so engaged, without being registered as an AP of the CTA, all in violation of Section 4k(3) of the Act, 7 U.S.C §6k(3) (1994) and Section 3.12 of the Regulations;

K. while acting as a CPO, (a) accepting funds other than in the name of the pool; (b) failing to treat the pool as a separate entity; and (c) commingling pool property with the property of other persons, all in violation of Regulation 4.20, 17 C.F.R. § 4.20 (2001).

2. Whidden and all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of Whidden, and all persons insofar as they are acting in active concert or participation with Whidden, who receive actual notice of this Order by personal service or otherwise, are further permanently restrained, enjoined and prohibited from directly or indirectly:

A. trading on or subject to the rules of any registered entity;

B. engaging in, controlling or directing the trading of any futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise; and

C. applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2001), or acting as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration, except as provided for in Regulation 4.14(a)(9).

#### **IV. THE APPOINTMENT OF A RECEIVER**

##### **IT IS FURTHER ORDERED THAT:**

1. Mark V. Silverio, Esq. is appointed as Receiver. The Receiver shall:
  - A. take control of the following accounts that are subject to the asset freeze imposed by the Court's Ex Parte Statutory Restraining Order, dated March 7, 2002, and thereafter modified and extended by the Court's Order of March 19, 2002 ("Freeze Order"): (a) accounts ## 643011968, 643009889 and 644003188 maintained at Riverside Bank of the Gulf Coast ("Riverside") in the name of Whidden and Westbrook, jointly, and Whidden doing business as Trade Master; (b) account #003668916711 maintained at Bank of America in the names of Whidden, Westbrook and Anita Blass, jointly; (c) trading account #743745 maintained at Refco LLC in the names of Whidden and Westbrook, jointly; and (d) trading account # 10563754 maintained at Man Financial Inc. in the names of Whidden and Westbrook, jointly. Whidden shall not retain any right, title or interest in said accounts;
  - B. enter into such agreements as are necessary to carry out the administration of the receivership, including, but not limited to, the retention and employment of investigators, attorneys or accountants of the Receiver's choice, including without limitation members and employees of the Receiver's firm, to assist, advise, and represent the Receiver.
2. Whidden and any other person or entity that receives actual notice of this Order by personal service or otherwise, shall immediately forthwith or within such time as permitted by the Receiver in writing, deliver over to the Receiver:
  - A. funds, assets, and/or property within their possession or control, owned beneficially or otherwise, wherever situated, which are subject to the Freeze Order; and
  - B. keys, computer passwords, entry codes, and combinations to locks required to open or gain access to the Trade Master Building located at 3701 Packinghouse Road, Alva, FL and/or Trade Master property, wherever situated.
3. Each firm, corporation or other person or entity with notice which holds, or which is a depository of funds, securities, property, or other assets of Whidden or of Trade Master frozen pursuant to the Freeze Order is prohibited, until further order of the Court, from

transferring, withdrawing, or removing any funds, securities, property, or other assets, except for the purposes of transferring such assets to the custody, control and possession of the Receiver.

4. Except by leave of this Court, during the pendency of the receivership ordered herein, Whidden and all customers, principals, investors, creditors, stockholders, lessors, and other person seeking to establish or enforce any claim, right or interest against or on behalf of any of the Defendants, or Trade Master, and all others acting for or on behalf of such persons, including attorneys, trustees, agents, sheriffs, constables, marshals, and other officers and their deputies, and their respective attorneys, servants, agents and employees be and are hereby stayed from:

A. commencing, prosecuting, continuing or enforcing any suit or proceeding against any of the Defendants, or any of their subsidiaries or affiliates, except that such actions may be filed to toll any applicable statute of limitations;

B. commencing, prosecuting, continuing or entering any suit or proceeding in the name or on behalf of any of the Defendants or Trade Master;

C. accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, the property of any of the Defendants, or any of their subsidiaries or affiliates or any property claimed by any of them or attempting to foreclose, forfeit, alter or terminate any of Whidden's interest in property including without limitation, the establishment, granting, or perfection of any security interest, whether such acts are part of a judicial proceeding or otherwise;

D. using self-help or executing or issuing, or causing the execution or issuance of any court attachment, subpoenas, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon any property, wheresoever located, owned by or in the possession of any of the Defendants, or any of their subsidiaries or affiliates, or the Receiver appointed pursuant to this order or any agent appointed by said Receiver; and

E. doing any act or thing whatsoever to interfere with the Receiver taking control, possession or management of the property subject to this receivership, or to in any way interfere with the Receiver, or to harass or interfere with the duties of the Receiver; or to interfere in any manner with the exclusive jurisdiction of the Court over the property and assets of the Defendants, or their subsidiaries or

affiliates, including the filing by Whidden of a petition for relief under the United States Bankruptcy Code, 11 U.S.C. §101 et seq., as to any defendant.

Provided however, nothing in this Paragraph shall prohibit any federal or state law enforcement or regulatory authority from commencing or prosecuting an action against the Defendants.

5. The Receiver and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver and accountants, are entitled to a fee for the performance of duties pursuant to this Order as well as reimbursement for the cost of actual out-of-pocket expenses incurred by them for those services authorized by this Order that when rendered were (1) reasonably likely to benefit the receivership estate or (2) necessary to the administration of the estate. The Receiver and all personnel hired by the Receiver shall be compensated solely out of the assets frozen by the Freeze Order, including any assets acquired after the date of the Court Order, and shall not be entitled to any compensation from the Commission. The Receiver shall file with the Court and serve on the parties requests for the payment of such compensation with the first such request filed no later than the completion of the subdivision of the property located at 3701 Packinghouse Road, Alva, Florida, and subsequent requests to be filed every ninety (90) days thereafter. The requests for compensation shall itemize the time and nature of services rendered by the Receiver and all personnel hired by the Receiver. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

6. Whidden shall cooperate with the Receiver to the extent necessary for the Receiver to execute his duties and responsibilities pursuant to this Order, including but not limited to, providing his signature to documents relevant and necessary for the Receiver to carry out his duties and responsibilities pursuant to this Order.

7. Nothing contained herein shall be interpreted as a waiver of Whidden's privileges (including, his attorney-client privilege and other disclosure privileges), work-product or constitutional rights, including his rights under the Fourth and Fifth Amendments to the United States Constitution.

#### **V. OTHER EQUITABLE RELIEF**

##### **IT IS FURTHER ORDERED THAT:**

1. Whidden shall pay restitution in an amount to be determined at a later date. If the parties do not reach an agreement as to the amount of restitution within ninety (90) days of the entering of this Order, subject to extension on motion, then the Court will schedule a hearing to determine the appropriate amount of restitution.

2. Whidden shall pay a civil monetary penalty in an amount to be determined at a later date. If the parties do not reach an agreement as to the amount of civil monetary penalty within ninety (90) days of the entering of this Order, subject to extension on motion, then the Court will schedule a hearing to determine the appropriate amount of civil monetary penalty.

#### **VI. MISCELLANEOUS PROVISIONS**

1. If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order, and the application of the provision to any other person or circumstance, shall not be affected by the holding.

2. Upon being served with copies of this Order after entry by the Court, Whidden shall sign an acknowledgment of such service and serve such acknowledgment on the Commission within seven (7) calendar days.

3. This Court shall retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees, including orders setting the appropriate amounts of restitution and civil monetary penalty, that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and to assure compliance with this Order.

4. Pursuant to the Court's Orders dated March 19, 2002 and April 8, 2002, Whidden is entitled to a monthly living allowance of \$3,000.00 and may access his personal account at Riverside for that purpose, to the extent that his current and future earnings are insufficient. The Receiver shall have no authority to control or administer Whidden's monthly allowance. Each month Whidden will disclose to the Commission, in the form of a written declaration, his earnings for that month and the amount of money (if any) withdrawn from the Riverside account to make up any shortfall. Earnings in excess of \$3,000.00 for any given month will be deposited into Whidden's personal account at Riverside and Whidden will so advise the Commission each month of any such deposits. The Commission shall have the authority to request additional documentation to verify the information contained in the declaration, including but not limited to, requesting bank records of Whidden. Whidden shall cooperate with the Commission's request for additional documentation, including but not limited to, providing bank records to verify the information contained in the declaration. The monthly living allowance shall continue until further order of the Court, which shall be entered following an order for restitution and/or civil monetary penalty.

5. The Statutory Restraining Order issued by this Court on March 7, 2002 and modified on March 19, 2002 shall remain in full force and effect until further order of this Court.

6. All notice required to be given by any provision in this Order shall be sent by certified mail, return receipt requested, as follows:

Notice to the Commission:

Eugene Smith, Esq.  
Paul G. Hayeck, Esq.  
Division of Enforcement  
Three Lafayette Centre  
1155 21<sup>st</sup> St. N.W.  
Washington, D.C. 20581  
Notice to the Defendants:

Janet K. DeCosta, Esq.  
Janet K. DeCosta, P.C.  
1919 Pennsylvania Avenue, N.W.  
Suite 200  
Washington, D.C. 20006  
(202) 638-3344  
(202) 824-8126 facsimile

7. In the event that Whidden changes his residential or business telephone number(s) and/or address(es) at any time, he shall provide written notice of the new number(s) and/or address(es) to the Commission within ten calendar days thereof.

**SO ORDERED**, this 27th day of September, 2002.

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United States District Judge

Consented and Agreed To By:

Counsel for Defendant:  
Ted E. Whidden

Commodity Futures Trading Commission:

By: \_\_\_\_\_  
Janet K. DeCosta  
Janet K. DeCosta, P.C.  
1919 Pennsylvania Avenue, N.W.  
Suite 200  
Washington, D.C. 20006  
(202) 638-3344  
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By: \_\_\_\_\_  
Eugene Smith, Esq.  
Paul G. Hayeck, Esq.  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20036  
(202) 418-5320  
(202) 418-5531 facsimile

Local Counsel:

Dated: \_\_\_\_\_, 2002

Defendant:

\_\_\_\_\_  
Ted E. Whidden