

United States of America
Before the
Commodity Futures Trading Commission

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In the Matter of

CFTC Docket No. 04-03

**BOSTON TRADING ADVISORS,
LLC, THOMAS E. BRAZIL and
ANDREW W. PRESTON,**

**ORDER INSTITUTING PROCEEDINGS
PURSUANT TO SECTIONS 6(c) AND 6(d)
OF THE COMMODITY EXCHANGE
ACT, MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS**

Respondents.

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that Boston Trading Advisors, LLC ("Boston Trading"), Thomas E. Brazil ("Brazil"), and Andrew W. Preston ("Preston") have violated Section 4m(1) and Section 4k(2) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 6m(1) and 6k(2) (2001), and Commission Regulations 4.21(a) and (b), 17 C.F.R. §§ 4.21(a) and (b)(2003). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether Boston Trading, Preston and Brazil engaged in the violations set forth herein, and to determine whether any order should be issued imposing any remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Boston Trading, Preston and Brazil have submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Without admitting or denying the findings of fact in this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, as amended, Making Findings and Imposing Remedial Sanctions ("Order"), Boston Trading, Preston and Brazil acknowledge service of this Order. Boston Trading, Preston and Brazil consent to the use of the

findings herein in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.¹

III.

The Commission finds the following:

A. SUMMARY

From February 2002 to the present, Boston Trading has received customer funds for the purpose of pooling the funds to trade in commodity futures contracts for the benefit of the pool participants ("customers"). Brazil and Preston, as principals of Boston Trading, solicited customers and administered the pool. Prior to and following the inception of the business of Boston Trading, Preston and Brazil sought the advice of counsel and consultants regarding legal compliance. They were advised that they need not register because they had less than 15 customers.

During 2002 and 2003, Boston Trading received customer funds in excess of \$1 million, requiring registration as a commodity pool operator pursuant to Section 4m(1) of the Act. In addition, Preston and Brazil failed to register as associated persons of Boston Trading pursuant to Section 4k(2). Finally, Boston Trading failed to provide disclosure documents and receive signed acknowledgements from customers in violation of Commission Regulations 4.21(a) and (b).

¹ Boston Trading, Preston and Brazil do not consent to the use of the Offer or this Order as the sole basis for any other proceeding brought by the Commission other than a proceeding to enforce the terms of this Order, nor do Boston Trading, Preston and Brazil consent to the use of the Offer, or the findings in the Order consented to in the Offer, by any other person or entity in this or any other proceeding. The findings made in the Order are not binding on any other person or entity named as a defendant or respondent in any other proceeding.

B. RESPONDENTS

Boston Trading is a limited liability company chartered in the Commonwealth of Massachusetts with an address of 790 Turnpike Street, Suite 300, North Andover, MA 01845. Boston Trading has never been registered with the Commission in any capacity.

Thomas E. Brazil resides at 17 Bayns Hill Road, Boxford, MA 01926. Brazil was registered with the Commission as an Associated Person of various firms from 1989 to 1991.

Andrew W. Preston resides at 8 Forest View Drive, Falmouth, ME 04105. Preston has never been registered with the Commission in any capacity.

C. FACTUAL BACKGROUND

Boston Trading Partners III ("BTP") was chartered as a Massachusetts limited partnership in late 2001. The general partner of Boston Trading Partners is a Massachusetts limited liability company named Boston Trading Advisors, LLC, ("Boston Trading") which is owned in equal shares by Preston and Brazil. In February 2002, Boston Trading opened an account at Rosenthal Collins Group ("RCG"), a registered futures commission merchant, in the name of BTP, the investment pool that Boston Trading intended to operate. Both Preston and Brazil began soliciting funds or supervising persons soliciting funds on behalf of the pool. On or about March 6, 2002, Boston Trading funded the RCG account by wire transfer in the amount of \$40,000.00 (forty thousand dollars) and began trading.

Since February 2002, as a result of solicitations by Preston and Brazil, customers have transferred to the Boston Trading pool funds in the amount of at least \$1,163,000.00 for the purpose of investing in contracts for the sale of a commodity for future delivery. Boston Trading deposits customer funds into a BTP account at a commercial bank and then transfers the funds to the account in its name at Rosenthal Collins Group. Customer funds are pooled in the RCG account and each customer is allocated a pro rata share of profits and losses. Boston Trading is compensated by receiving 20% of the profits. To date, most customers have earned significant returns on their investments.

At the time Boston Trading and BTP were formed, Preston and Brazil sought the advice of counsel regarding registration requirements, and were advised that registration was not necessary. Additionally, in October 2002, Boston Trading hired a consultant to advise them on regulatory matters, including expanding and marketing their business. The consultant, a registrant, informed Preston and Brazil that they did not have to register as a CPO since they had

less than 15 investors. The consultant did not address the regulatory limits for the aggregate investment. Similarly, Boston Trading later consulted with a self-described “compliance specialist” who advised Preston and Brazil that they did not have to register as a CPO until they had 15 investors.

As a result, Boston Trading did not register with the Commission as a CPO, did not provide required cautionary statements and risk disclosure statements to clients or prospective clients, and did not receive from clients signed acknowledgements of receipt of cautionary statements and risk disclosure statements. Further, neither Preston nor Brazil registered as an associated person of a CPO. Brazil resigned from Boston Trading in December 2002.

D. LEGAL DISCUSSION

Boston Trading, while acting as a CPO, violated Section 4m(1) of the Act and Commission Regulations 4.21(a) and (b). A CPO is defined as “any person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts or receives from others, funds . . . for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market. . . .” 7 U.S.C. § 1a(5). By running a business in which customers are to receive a share of trading profits from a commodity futures trading account, Boston Trading engages in a business in the nature of an investment trust or syndicate and, therefore, is a CPO. *See S.E.C. v. Princeton Economic Intern. Ltd.*, 73 F.Supp.2d 420 (S.D.N.Y. 1999).

As a CPO receiving compensation for its services having greater than \$1 million in gross investments by customers, Boston Trading is required to register with the Commission. *See* 7 U.S.C. § 4m(1) and 17 C.F.R. 4.13(a). By failing to register, Boston Trading violated Section 4m(1) of the Act. While acting as a CPO required to be registered, Boston Trading is required to provide disclosure documents and receive signed acknowledgements from customers pursuant to Commission Regulations 4.21(a) and (b). By failing to provide the required disclosures, Boston Trading violated Commission Regulations 4.21(a) and (b).

Both Preston and Brazil solicited funds on behalf of Boston Trading and/or supervised persons soliciting funds on behalf of Boston Trading. This activity requires registration pursuant to Section 4k(2) of the Act. Both Preston and Brazil failed to register with the Commission in violation of Section 4k(2) of the Act.

IV.

OFFER OF SETTLEMENT

Boston Trading, Preston and Brazil submitted an Offer in which they neither admit nor deny the findings in the Order. Subject to the foregoing, Boston Trading, Preston and Brazil acknowledge service of this Order and admit the jurisdiction of the Commission with respect to the matters set forth in this Order. They waive: (1) a hearing and all post-hearing 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, §§231-32, 110 Stat. 962-63, and Part 148 of the Regulations, 17 C.F.R. §§ 148.1, *et seq.*, relating to or arising from this action; 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.

Boston Trading, Preston and Brazil stipulate that the record basis on which this Order is entered consists of the Order and the findings to which they have consented in the Offer, which are incorporated in this Order. Boston Trading, Preston and Brazil consent to the Commission's issuance of this Order, which makes findings as set for the herein, and orders that Boston Trading, Preston and Brazil:

1. cease and desist from violating the provisions of the Act and the Regulations that they have been found to have violated;
2. pay a civil monetary penalty ("CMP") of \$10,000; and
3. comply with the undertakings as set forth in the Offer and incorporated in this Order.

V.

FINDINGS OF VIOLATIONS

Solely on the basis of the consent evidence in the Offer, and prior to any adjudication on the merits, the Commission finds that Boston Trading violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1), and Commission Regulations 4.21(a) and (b), 17 C.F.R. §§ 4.21(a) and (b), and Preston and Brazil violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

1. Boston Trading shall cease and desist from violating Section 4m(1) of the Act, 7 U.S.C. § 6m(1), and Commission Regulations 4.21(a) and (b), 17 C.F.R. §§ 4.21(a) and (b);
2. Preston and Brazil shall cease and desist from violating Section 4k(2) of the Act, 7 U.S.C. § 6k(2);
3. Boston Trading, Brazil and Preston, jointly and severally, pay a civil monetary penalty in the amount of Ten Thousand Dollars (\$10,000) within 10 (ten) business days of the date of the entry of this Order, and make such payment by electronic funds transfer to the account of the Commission at the United States Treasury or by money order, certified check or bank cashier's check made payable to the Commodity Futures Trading Commission and addressed to Dennese Posey, Division of Enforcement, Commodity

Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identify Boston Trading, Brazil and Preston and the name and docket number of this proceeding. Copies of the cover letter and the form of payment shall be simultaneously transmitted to Gregory G. Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if Boston Trading, Brazil and Preston fail to make payment of the penalty within fifteen (15) days of the respective due date, they shall be automatically prohibited from trading on or subject to the rules of any registered entity, as defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29), until they show to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date of payment has been made; and

4. Boston Trading, Brazil and Preston shall comply with the undertakings as set forth in Section III of their offer as follows:
 - (a) not to engage in any activity which requires registration with the Commission as a CPO, including receiving customer funds for the purpose of pooling the funds to trade in commodity futures contracts for the benefit of the pool participants ("customers"), until Boston Trading: (a) is registered as a CPO with the Commission pursuant to Section 4m(1) of the Act, 7 U.S.C. § 6m(1); (b) Boston Trading delivers or causes to be delivered to each customer a Disclosure Document as required by Regulation 4.21(a); and (c) Boston Trading receives from each customer an acknowledgement signed and dated by that customer stating that such customer received a Disclosure Document for the commodity pool, as required by Regulation 4.21(b), 17 C.F.R. § 4.21(b);
 - (b) not to engage in any activity which requires registration with the Commission as an associated person of a CPO until Preston is registered as associated persons of a CPO pursuant to Section 4k(2) of the Act, 7 U.S.C. § 6k(2);
 - (c) within 48 hours of the issuance of this Order, to: (a) provide each current client with a copy of the Order accepting the Offer of Settlement; (b) explain to each current client the terms of the Order; and (c) notify each current client that Boston Trading is only allowed to trade the client's account "for liquidation only" until it satisfies the undertaking set forth in this Section IV;
 - (d) not to take any action or make any public statement denying, directly or indirectly, any finding in the Order, or creating, or tending to create, the impression that the Order is without factual basis; provided, however, that nothing in this provision affects Boston Trading, Brazil and/or Preston's: (i) testimonial obligations; or (ii) right to take legal or factual positions in other proceedings to which the Commission is not a party.

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

By the Commission.



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

Date: October 27, 2003