

United States of America  
Before the  
Commodity Futures Trading Commission

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In the Matter of

MICHAEL INGWERSON,

Respondent.

CFTC Docket No. 03-19

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

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that Michael Ingwerson ("Ingwerson") has violated Sections 40(1)(A) and (B) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 60(1)(A) and (B) (2001), and Commission Regulations 4.41(a)(1) and (2), 17 C.F.R. § 4.41(a) (2002). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether Ingwerson 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, Ingwerson has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Without admitting or denying any of the allegations of the Complaint or the findings herein, and prior to any adjudication on the merits, Ingwerson acknowledges service of this Order Making Findings and Imposing Remedial Sanctions ("Order"). Ingwerson consents to the use of the findings herein in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.<sup>1</sup>

<sup>1</sup> Ingwerson does 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 does Ingwerson 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.

### III.

The Commission finds the following:

#### A. SUMMARY

From at least January 2000 through March 2003, Ingwerson engaged in fraud in the conduct of his commodity-based advisory business. Ingwerson operated an Internet website, *www.trademaniac.com*, through which he offered and sold, among other things, a trading manual called the “Magic Money Manual” (the “Manual”), containing a system for trading commodity futures.

In the *Trademaniac* website and promotional letter, Ingwerson misrepresented both his track record, the profit potential, and the risk of trading commodity futures. For example, the website prominently contained the following profit misrepresentation:

I am going to tell you two things now and I want you to **read them very carefully**:

#1. 90% of all people who trade commodities lose money!

#2. If you trade commodities *using my formula* you **can't** lose money!

**Please reread those two facts...** [O]nce you have my wealth formula **you will be in the 10% of people who make money** trading commodities... [and] not... just a little bit of money. I am talking about **changing your life style** type of money (emphasis in original).

The website and a direct-mail promotional letter that Ingwerson sent to thousands of people also claimed that the Magic Money Manual explains how one could make \$10,000 a month working less than 20 minutes a day. Ingwerson made repeated claims in the *Trademaniac* website and the promotional letter that he was making “a fortune” and was “financially independent” from trading commodities by using his trading system, and that customers who bought his trading manual would make similar profits.

Ingwerson’s claims of significant commodity profits and low risk were false. In fact, Ingwerson never sustained large profits. A review of his trading records as of March 2003 reveals that he had net trading losses in 2001 and the year to date in 2003. During the three-year period from January 2000 until February 2003, Ingwerson made a mere aggregate profit of \$8,433.96. His profits from trading commodity futures were not nearly enough to make him financially independent.

Ingwerson also misrepresented the risk of trading commodity futures. For instance, the website claimed that “commodities are not risky unless you take risks...[and] [w]hen you trade commodities my way you will realize that it is one of the safest investments you can make.” As a result of these false and misleading statements, Ingwerson, acting as a commodity trading

advisor ("CTA") violated §40 of the Act, 7 U.S.C. §60, as well as Regulation 4.41(a), 17 C.F.R. § 4.41.

## **B. RESPONDENT**

**Michael Ingwerson** resides at 1443 Pollard Road, Campbell, California 95008. He is the author of the Manual. He also operated the *www.trademaniac.com* website until March 2003. Ingwerson has never been registered with the Commission in any capacity.

## **C. FACTUAL BACKGROUND**

### **1. Products Sold Through the Internet and Direct-Mail Letters**

During the period from at least January 2000 until March 2003, Ingwerson wrote and published a futures trading manual called the "Magic Money Manual," the "Trader's Internet Resource Guide," the "Creating Wealth Trading Commodity Options" manual, and an accompanying tape titled "ONLINE TRADING: The Best Home Business Ever Invented!" During the same period, Ingwerson created and operated a web site called *www.trademaniac.com*, from which he offered and sold the Manual, the tape, and other publications. Ingwerson also marketed his publications via promotional letters that he sent to thousands of people. The letters were sent to mailing lists that Ingwerson rented. Ingwerson charged \$69.95 (plus \$5.00 for shipping and handling) for the Magic Money Manual and ultimately sold it to approximately 3702 customers, collecting approximately \$277,464.90 in revenue.

Ingwerson also offered a trading advice service called "The Elite Commodity Trading Program." This service consisted of Ingwerson sending subscribers specific suggestions on trades every two weeks. He used a 5-page direct-mail letter to promote this service, charging subscribers \$297 for the first year, and \$597 for every year thereafter.

### **B. False and Misleading Claims Concerning Profits and Risk**

Ingwerson's website and various direct-mail letters falsely claimed that Ingwerson was financially successful and financially independent from the profits of his commodity futures trading. Ingwerson also predicted certain large profits from the use of his commodity futures trading system, while he minimized the risks that such trading entails.

In addition to the specific profit and risk misrepresentations quoted above, the website and the direct-mailed letter made the following false claims to entice members of the public to purchase the Manual:

1. "How to Add \$10,000 a Month To Your Bank Account, Working Less Than 20 Minutes a Day!"
2. "Amazing Wealth Formula Creates Huge Profits!"

3. "I have perfected a wealth formula that generates money fast and easy."
4. "I have used this information to create what I consider to be the **perfect home based business**. If you have **just 20 minutes a day** to check a few financial statistics I can show you how to **create a lifetime of financial independence**. **You will be able to do what you want for the rest of your life!**"
5. "The point is, the system I will teach you is **so simple** that you can **make a fortune** *not even knowing what you are trading.*"
6. "I continue to enlarge my fortune trading commodities every day."
7. "Because I know, as you would know if you were in my shoes, that if I can just convince you to test my formulas and methods, you will see for yourself that they will work as easily for you as they did for me." (All emphases in original.)

In a different 5-page direct-mail letter used to promote the "Elite Commodity Trading Program," Ingwerson made the following misleading statements:

1. "These are powerful trades that produce winners about 80% of the time."
2. "[I]n the past I am running at about an 80% success ratio. This means that 8 out of 10 trades are profitable."
3. "Would You like To Add \$10,000 A Month To Your Bank Account Working Less Than 20 Minutes A Day?"
4. "Now There Is A New Service That Provides You With Information To Help You Achieve Financial Freedom..."
5. "This is the one program that can make you an instant success."
6. "This program is not for everyone. This program is only for those who want to earn more in a single year than most people earn in an entire lifetime."
7. "I will... let you know what the best commodity trades are right now."
8. "Right now is a phenomenal time for commodities. So many of them are making big profitable moves."
9. "The important part is that the information in the Elite Commodity Trading Program is solid."
10. "Fortunes are being made, almost daily! You don't want to miss this opportunity."
11. "If you are searching for that easy road to financial freedom this is it."

12. "I want you to join the elite group of traders who are in that 10% and take home all of the profits."

Despite these claims, in the period between January 2000 and March 2003, Ingwerson's personal trading accounts actually lost money in two of the four years he traded. Over a three and a half year period from January 2000 through March 2003, Ingwerson had a net gain of only \$8,433. He incurred a loss of \$6,357.35 in 2001, and in all of 2002 he made only \$3,268.30. In the first 2 months of 2003, he lost \$3,622.64. An analysis of the trading results in Ingwerson's account reveals that his trading method did not create for him "a lifetime of financial independence," nor did it generate "\$10,000 a month." Ingwerson also posted fabricated customer testimonials on his website under the heading "REAL TESTIMONIALS".

### C. LEGAL DISCUSSION

Ingwerson, while acting as a CTA, violated Sections 4o(1)(A) and (B) of the Act and Commission Regulations 4.41(a)(1) and (2) on the website and in the direct-mail letters in that, while acting as a CTA, he misrepresented the profit potential and risk of trading commodity futures, he misrepresented that his trading system would result in substantial profits by stating that he had personally made substantial profits trading commodities, and he fabricated customer testimonials.

To establish a violation of Section 4o(1)(A) or (B) of the Act, the Division must prove that Ingwerson acted as a commodity trading advisor ("CTA"). Section 1a(6) of the Act defines a CTA, in part, as a person who advises another about the value or advisability of trading in commodity futures contracts or commodity option contracts, directly or through publications, writings or electronic media, for compensation or profit.<sup>2</sup> Ingwerson gave commodity futures trading advice for compensation or profit through the sale of the Magic Money Manual and through his "Elite Commodity Trading Program". The website also made many statements in the first person, as though being "spoken" by Ingwerson, about his prowess and success as a trader and advisor, and offered advisory products related to commodities trading on the basis of that purported prowess and success. Ingwerson therefore acted as a CTA, whether or not he was registered, or required to be registered, as such.<sup>3</sup>

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<sup>2</sup> Section 1a(6) specifically excludes from the definition of a CTA anyone who is "the publisher or producer of any print or electronic data of general and regular dissemination, including its employees" if such publisher's or producer's provision of commodity futures trading advice is "solely incidental to the conduct of [its] business or profession". This exclusion is designed to protect incidental publishers of advice, such as general magazines and newspapers, not publishers who specifically concentrate on commodities advice. *R&W Technical SVCS., Ltd. v. Commodity Futures Trading Comm'n*, 205 F.3d 165, 174 (5<sup>th</sup> Cir. 2000), *cert. denied*, 121 S.Ct. 54 (2000). Because Ingwerson's CTA services was the primary object of the business he conducted through his website during the relevant period, he does not qualify for this exclusion.

<sup>3</sup> See *CFTC v. British American Commodity Options Corp.*, 560 F.2d 135, 141 (2<sup>nd</sup> Cir. 1977), *cert. denied*, 438 U.S. 905 (1978) (a firm that "offer[ed] opinions and advice, and issued analyses and reports concerning the value of commodities" to customers, was a CTA under the Act); *Gaudette v. Panos*, 644 F. Supp. 826, 839 (D. Mass. 1986) (defendant who represented their advisory skills to be exemplary, suggested that plaintiffs open a commodity account and then recommended certain futures contracts for investment were CTAs.)

Section 4o(1)(A) prohibits both registered and unregistered CTAs from making material misrepresentations and omissions to their clients regarding futures and options transactions.<sup>4</sup> *In re R&W Technical Services, Ltd.*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,582 (CFTC March 16, 1999), *aff'd in relevant part, R&W Technical Services, Ltd. v. Commodity Futures Trading Commission*, 205 F.3d 165, 170 (5th Cir. 2000) (prohibiting fraud by an unregistered CTA who sold trading systems to the public). Similarly, Commission Regulation 4.41(a)(1) prohibits a CTA, whether registered or unregistered, from advertising in a fraudulent or misleading manner.<sup>5</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, 351-354 (W.D.Mich. 1977), *aff'd in part and rev'd in part*, 691 F.2d 800 (6<sup>th</sup> Cir. 1980).

A statement is material if it is substantially likely that a reasonable investor would consider the matter important in making an investment decision. *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976); *Sudol v. Shearson Loeb Rhoades, Inc.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,748, at 31,119 (CFTC Sept. 30, 1985). Generally, omissions and misrepresentations of fact concerning the likelihood of profiting from commodity futures and commodity options transactions are material and violate the antifraud provisions of the Act. *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).

Specifically, misrepresentations regarding a firm or broker's trading record and experience are fraudulent because past success and experience are material facts to reasonable investors. *See CFTC v. Commonwealth Financial Group, Inc.*, 874 F. Supp. 1345, 1353-54 (S.D. Fla. 1994), *citing, inter alia, Reed v. Sage Group*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,942 at 34,299 (CFTC Oct. 14, 1987).

Representations that the purveyors of a trading system use their own trading system are also material. *In re R & W Technical Services, Ltd.*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,582 at 47,742 (CFTC Mar. 16, 1999), *aff'd in relevant part, R&W Technical Svcs., Inc. v. CFTC*, 2000 WL 217498 (5<sup>th</sup> Cir. Feb. 24, 2000) ("The use of a trading system by its developers is important to reasonable consumers because it reflects a meaningful vote of self-confidence and a sign of authenticity").

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<sup>4</sup> Section 4o(1) of the Act provides, in pertinent part:

It shall be unlawful for a [CTA] . . . by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly (A) to employ any device, scheme or artifice to defraud any client . . . or prospective client . . . or (B) to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client . . . or prospective client.

<sup>5</sup> Commission Regulation 4.41(a) provides, in pertinent part:

No . . . commodity trading advisor, or any principal thereof, may advertise in a manner which (1) [e]mploys any device, scheme or artifice to defraud any . . . client or prospective client; or (2) [i]nvolves any transaction, practice or course of business which operates as a fraud or deceit upon any . . . client or any prospective . . . client.

Ingwerson is liable for violating Section 4o(1)(A) and Commission Regulation 4.41(a)(1) by conveying on the website that he was earning profits from trading futures according to the trading system described in the "Magic Money Manual." Ingwerson made these misrepresentations notwithstanding the fact that he had not achieved the level of profits advertised. As noted above, over a three and a half year period from January 2000 through March 2003, Ingwerson had a net gain of only \$8,433. He incurred a loss of \$6,357.35 in 2001, and in all of 2002 he made only \$3,268.30. In the first 2 months of 2003, he lost \$3,622.64.

Finally, in order to establish a violation of Section 4o(1)(A) of the Act and Regulation 4.41(a)(1) it must be shown that the fraud was committed with scienter. Here, Ingwerson acted with scienter because he knew that his trading was not as successful as he had portrayed in his solicitations.

Section 4o(1)(B) of the Act prohibits a commodity trading advisor, whether or not he is required to be registered, "to engage in any ... practice or course of business which operates as a fraud or deceit upon any client or prospective client. ..." *CFTC v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985); see Section 4.15 of the Commission's Regulations, 17 C.F.R. §4.15 (2002). Similarly, Regulation 4.41(a)(2) prohibits advertising by a commodity trading advisor that operates as a fraud or deceit on clients or prospective clients. As noted above, Ingwerson acted as a CTA.

Unlike Section 4o(1)(A) of the Act, scienter is not required to prove a violation of Section 4o(1)(B) of the Act or Commission Regulation 4.41(a)(2). See *In re Slusser*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,701 at 48,315 (CFTC July 19, 1999), *aff'd in relevant part, Slusser v. CFTC*, 210 F.3d 783 (7<sup>th</sup> Cir. 2000), or a violation of Section 4.41(a)(2), *Commodity Trend Serv. v. Commodity Futures Trading Commission*, 233 F.3d 981, 993 (7<sup>th</sup> Cir. 2000). Ingwerson's misrepresentations about his profitable trading were material and operated as a fraud or deceit because they falsely conveyed that purchasers of the Magic Money Manual and Elite Commodity Trading Program would achieve significant profits. Thus, Ingwerson, acting as a commodity trading advisor, directly violated Section 4o(1)(B) of the Act and Regulation 4.41(a)(2) by engaging in a transaction, practice or course of business which operated as a fraud or deceit upon clients and prospective clients by allowing materially misleading claims to be included on the *trademaniac.com* website and in direct mailers.

#### IV.

#### OFFER OF SETTLEMENT

Ingwerson has submitted an Offer in which he neither admits nor denies the allegations in the Complaint or the findings in this Order. Subject to the foregoing, Ingwerson acknowledges service of this Order and admits the jurisdiction of the Commission with respect to the matters set forth in the Complaint and the Order. He waives: (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 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. 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.

Ingwerson stipulates that the record basis on which this Order is entered consists of the Complaint and the Order and the findings to which he has consented in the Offer, which are incorporated in this Order. Ingwerson consents to the Commission's issuance of this Order, which makes findings as set for the herein, and orders that Ingwerson:

1. cease and desist from violating the provisions of the Act and the Regulations that he has been found to have violated;
2. pay a civil monetary penalty ("CMP") of \$59,000; 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 Ingwerson violated Section 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B), and Section 4.41(a) of the Regulations, 17 C.F.R. § 4.41(a).

## VI.

### ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

1. Ingwerson shall cease and desist from violating Sections 4o(1) (A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B), and Section 4.41(a)(1) and (2) of the Regulations, 17 C.F.R. § 4.41(a)(1) and (2).
2. Ingwerson shall pay a civil monetary penalty of fifty-nine thousand dollars (\$59,000) within ten (10) business days of this Order. Ingwerson shall 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 21<sup>st</sup> Street, N.W., Washington D.C. 20581, under cover of a letter that identifies Ingwerson and the name and docket number of the proceeding. A copy of the cover letter and the form of payment shall be simultaneously transmitted to Gregory Mocek, 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



3. Ingwerson shall comply with his undertakings as set forth in Section III of his offer as follows:

A. Registration with the Commission

Ingwerson shall not (i) apply for registration with the Commission or seek exemption from registration with the Commission in any capacity, and shall not engage in any activity requiring registration or exemption from registration, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.41(a)(9); (ii) act, directly or indirectly, as a principal, officer, director, agent or employee of any person registered, required to be registered or exempted from registration, unless such exemption is pursuant to Commission Regulation 4.14(a)(9); and (iii) act, directly or indirectly, in a supervisory capacity over any person employed by any person registered, required to be registered or exempted from registration, unless such exemption is pursuant to Commission Regulation 4.14(a)(9).

B. Fraudulent Misrepresentations

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

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

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

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

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

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

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

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

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

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

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

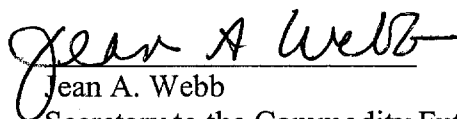
unless: (i) he possesses and relies upon a reasonable basis substantiating the representation at the time it is made; and (ii) for two (2) years after the last date of the dissemination of any such representation, he maintains all advertisements and promotional materials containing such representation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

C. Public Statements

Ingwerson agrees that neither he nor any of his agents or employees acting under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegations in the Complaint or findings in the Order or creating, or tending to create, the impression that the Complaint or the Order is without a factual basis; provided, however, that nothing in this provision affects Ingwerson's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Ingwerson will undertake all steps necessary to assure that all of his agents and employees understand and comply with this agreement.

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

By the Commission.

  
Jean A. Webb  
Secretary to the Commodity Futures  
Trading Commission

Date: July 11, 2003