

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

Arthur Douglas Rowell,

Respondent.

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) **CFTC Docket No: 04-02**
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) **ORDER INSTITUTING PROCEEDINGS**
) **PURSUANT TO SECTIONS 6(c) and 6(d)**
) **OF THE COMMODITY EXCHANGE**
) **ACT, AS AMENDED, MAKING**
) **FINDINGS AND IMPOSING REMEDIAL**
) **SANCTIONS**
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I.

The Commodity Futures Trading Commission (the "Commission") has reason to believe that Arthur Douglas Rowell ("Rowell" or the "Respondent") has violated Section 4b(a)(2)(i) and (iii) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 6 b(a)(2)(i) and (iii) (2001) and Section 1.1(b)(1) and (3) of the Commission's Regulations ("Regulations"), 17 C.F.R. §1.1(b)(1) and (3) (2002). Consequently, the Commission deems it appropriate and in the public interest that an administrative proceeding be, and hereby is, instituted to determine whether Rowell has engaged in the violations set forth in this Order, and whether an Order should be issued imposing remedial sanctions

II.

In anticipation of the institution of an administrative proceeding, the Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying the findings of fact or conclusions of law set forth herein, and prior to any adjudication on the merits, the Respondent acknowledges service of this Order. The Respondent consents 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.¹

¹ Respondent does not consent to the use of the Offer or this Order, or the findings to which he has consented in the Offer, as the sole basis for any other proceeding brought by the Commission other than a proceeding brought to

III.

The Commission finds the following:

A. SUMMARY

Starting in January 2003, Rowell used his web site, www.Pro-Currency Traders.com ("Pro-Currency Traders"), and Internet newsgroups and forums to make material misrepresentations regarding his trading abilities in an attempt to fraudulently solicit customers to trade foreign currency futures contracts at a registered futures commission merchant ("FCM"). In all, Rowell introduced ten accounts to the FCM; of those, nine granted him power of attorney to trade foreign currency futures contracts.

The false and misleading statements that Rowell posted on the Internet in his successful attempt to solicit retail customers to trade foreign currency futures contracts constituted violations of Section 4b(a)(2)(i) and (iii) of the Act, and Section 1.1(b)(1) and (3) of the Commission's Regulations.

B. RESPONDENT

ARTHUR DOUGLAS ROWELL, who resides in Waynesboro, Mississippi, has never been registered with the Commission in any capacity.

C. FACTS

Rowell's Use of the Internet

Beginning in January 2003, Rowell designed and used the Pro-Currency Traders web site to solicit customers, most or all of whom were retail customers, to open forex accounts at a registered FCM. Rowell was paid a fee by the FCM for each trade for each of his customers. Rowell fraudulently induced at least nine retail customers to execute powers of attorney allowing Rowell to trade their foreign currency futures contracts at FX Solutions.

Rowell promoted this web site, and his own supposed trading acumen, on the web site itself and in various Internet forums and newsgroups. His promotional claims of trading success were materially misleading. For example, Rowell presented a "Trading Signals History" from August 2002 through April 2003 with the notation: "we have not had a losing month yet." If Rowell presented these supposed results as the results of actual trading, the representation was false: he had no actual trading history dating back to August 2002, had only been managing

enforce the terms of this Order. He does not consent to the use of the Offer or this Order by any other person or entity in this or any other proceeding. The findings to which he has 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.

customer accounts since January 2003, and most accounts he managed during January and March 2003 lost money. If, instead, the statement referred to hypothetical trading, then Rowell failed, in light of the actual losses suffered by customers for whom he was managing accounts according to the trading system, to post simultaneously his actual losing track record of trading, which constituted a fraudulent omission in light of the affirmative statements he made about "no losing months." Further, he failed to provide the required notice regarding hypothetical trading.

Rowell Solicited Retail Customers to Trade Futures Contracts

The contracts traded by Rowell on behalf of others were foreign currency futures contracts. The contracts involved the purchase and sale of foreign currency for future delivery. Customers entered into contracts at a price determined at the time they entered into the contracts. To close a position, customers did not need, or expect, to make or receive physical delivery of the currency. Rather, customers captured price movements and speculated on price changes of the currencies without transferring or expecting to transfer the underlying currency. Ultimately, the contracts were settled through offsetting transactions. Rowell also admitted that the underlying purpose of the forex contracts was to speculate on price change, not to obtain physical currency.

D. LEGAL DISCUSSION

1. Respondent Committed Solicitation Fraud In Violation of Section 4b(a)(2)(i) and (iii) of the Act and Section 1.1(b)(1) and (3) of the Commission's Regulations

Sections 4b(a)(2)(i) and (iii) of the Act prohibit any person (i) from cheating or defrauding any other person or (iii) willfully deceiving or attempting to deceive another person in connection with any contract of sale of any commodity for future delivery for or on behalf of any other person. Sections 4b(a)(2)(i) and (iii) prohibits all manner of omissions and misrepresentations of material fact regarding futures transactions, including misrepresentations concerning the likelihood of profit and the risk of loss and other matters that a reasonable investor would consider material to his investment decision. *See, e.g., Commodity Futures Trading Com'n v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321 (11th Cir. 2002) (solicitations touting the profitability of investments are fraudulent as a matter of law when they fail to disclose simultaneously the material losses suffered by customers in the same types of investments); *see also JCC, Inc., et al. v. CFTC*, 63 F.3d 1557, 1571 (11th Cir. 1995) (misrepresentations concerning the likelihood of profits and risk of loss); *Saxe v. E.F. Hutton and Co., Inc.*, 789 F.2d 105, 110-11 (2nd Cir. 1986); *CFTC v. U.S. Metals Depository Co.*, 468 F. Supp. 1149, 1161 (S.D.N.Y. 1979) ("glowing" representations concerning market expectations and likelihood of profit misrepresentations regarding profitability of investment).

Liability for solicitation fraud is established when a person or entity is found to have made misleading statements of, or omitted to disclose, material facts with *scienter*. *Hammond v. Smith Barney, Harris Upham and Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH)

¶ 24,617 at 36,657-36,659 (CFTC March 1, 1990) (*scienter* is a necessary element to establish futures fraud under Section 4b(a)). *Scienter* requires proof that the respondents committed the wrongful acts “intentionally or with reckless disregard for their duties under the Act.” *Id.* at 36,659.

Rowell posted his purported “Trading Signals History” from August 2002 through April 2003 and the notation: “we have not had a losing month yet” knowing that his actual customers had lost money during portions of this period, and that no actual trading had occurred before January 2003. As a result, Rowell’s statements and omissions were materially misleading and made with *scienter*. Accordingly, we find that Rowell violated Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) and Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3).²

IV.

OFFER OF SETTLEMENT

Rowell has submitted an Offer of Settlement in which he admits the jurisdiction of the Commission with respect to the matters set forth in this Order and acknowledges that failure to comply with the Order shall constitute a violation of the Order and may subject him to injunctive or administrative proceedings under the Act. Rowell waives the filing and service of a complaint and notice of hearing, a hearing, all post-hearing procedures, judicial review by any court, any objection to the staff’s participation in the Commission’s consideration of the Offer, 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 all claims which he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412, as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63, and Part 148 of the Commission Regulations, 17 C.F.R. §§ 148.1, *et seq.*, relating to, or arising from this action.

Rowell stipulates that the record basis on which this Order is entered consists solely of the findings in this Order, the entry of which he has consented to in his Offer. Rowell consents to the Commission’s issuance of this Order, which makes findings, as set forth herein, and orders that: (1) Rowell cease and desist from violating Section 4b(a)(2)(i) and (iii) of the Act and Section 1.1(b)(1) and (3) of the Regulations; (2) Rowell is subject to a two year ban from trading on registered entities; (3) Rowell is liable to pay a civil monetary penalty in the amount of fifteen thousand dollars (\$15,000); and (4) Rowell shall comply with his undertakings as set forth in his Offer and incorporated in this Order including: (a) not to apply for registration or seek exemption

² This anti-fraud rule applies to retail foreign currency agreements, contracts and transactions described in section 2(c)(1) of the Act and states, in significant part, that:

- It shall be unlawful for any person, directly or indirectly, in or in connection with any account, agreement, contract or transaction that is subject to paragraph (a) of this section:
- (1) To cheat or defraud or attempt to cheat or defraud any person;
 - (2) Willfully to make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or
 - (3) Willfully to deceive or attempt to deceive any person by any means whatsoever.

17 C.F.R. § 1.1(b)(1) and (3)

from registration with the Commission in any capacity for two (2) years from the date of this Order, except as provided for in Regulation 4.14(a)(9), and not to engage in any activity requiring registration or exemption from registration for two (2) years from the date of this Order, unless such exemption is pursuant to Regulation 4.14(a)(9); (b) for a period of two (2) years from the date of this Order not to engage in, control, or participate in any manner or affiliate in any way with any individual or entity which involves the solicitation, acceptance of orders, transmission of orders, advice related to futures or options trading or trading, or execution of commodity futures contracts, options on commodity futures contracts, or options on foreign currency as a counterparty or for or on behalf of any person or entity; (c) never to take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or finding or conclusion in this Order or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis.

V.

FINDING OF VIOLATIONS

Solely on the basis of the consent of Rowell as evidenced by his Offer, and prior to any adjudication on the merits, the Commission finds that Rowell violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) and Section 1.1(b)(1) and (3) of the Regulations, 17 C.F.R. § 1.1(b)(1) and (3).

VI.

ORDER

Based on the consent of Rowell to the entry of this Order and the findings herein that Rowell violated Section 4b(a)(2)(i) and (iii) of the Act and Section 1.1(b)(1) and (3) of the Regulations, the Commission deems it appropriate and in the public interest to impose remedial sanctions against Rowell, and accordingly:

- A. **IT IS HEREBY ORDERED** that Rowell shall cease and desist from violating Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) and Section 1.1(b)(1) and (3) of the Regulations, 17 C.F.R. § 1.1(b)(1) and (3).
- B. **IT IS HEREBY FURTHER ORDERED** that Rowell is prohibited from trading on or subject to the rules of any registered entity and all registered entities shall refuse Rowell all privileges thereon for a period of two years from the date of this Order.
- C. **IT IS HEREBY FURTHER ORDERED** that Rowell shall pay a civil monetary penalty in the amount of fifteen thousand dollars (\$15,000). Rowell shall make 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 Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street,

N.W., Washington, D.C. 20581, under cover of a letter that identifies Rowell and the name and docket number of the proceeding; Rowell shall simultaneously transmit a copy of the cover letter and the form of payment to Gregory G. Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, N.W., Washington, D.C. 20581.

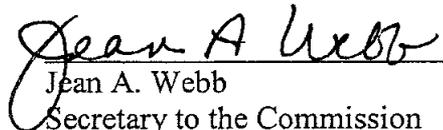
D. IT IS HEREBY FURTHER ORDERED that Rowell shall comply with the following undertakings:

1. Rowell shall not take any action or make any public statement denying, directly or indirectly, any finding in this Order, or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision effects Rowell's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party;
2. for a period of two years from the date of this Order, Rowell shall not engage in, control, or participate in any manner or affiliate in any way with any individual or entity which involves the solicitation, acceptance of orders, transmission of orders, advice relating to foreign currency futures or options, trading or execution of foreign currency futures contracts, options on foreign currency futures contracts, or options on foreign currency as a counterparty or for or on behalf of any person or entity; and
3. for a period of two years from the date of this Order, Rowell shall not apply for registration, seek exemption from registration, engage in any activity requiring registration or exemption from registration, except as provided for in Section 4.14(a)(9) of the Commission's Regulations, or act in any capacity or affiliate in any way with any individual or entity that is registered, is required to be registered, or is exempt from registration with the Commission, except as provided for in Section 4.14(a)(9) of the Commission's Regulations, or is acting in any capacity requiring registration with the Commission or exempt from registration, except as provided in Section 4.14(a)(9) of the Commission's Regulations.

Unless otherwise specified, the provisions of this Order shall be effective on this date.

Dated: October 15, 2003

BY THE COMMISSION


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