

3. In his advertising on the Cybrlink.com website, Sidewitz fraudulently touted substantial profits from using the trading systems and commodity options trading advisory service, and mischaracterized the performance records of the systems and advisory service as being based on actual trades, when they were actually based on simulated or hypothetical trades. Because Sidewitz knew his representations of substantial profits were false, he violated Section 4o(1)(A) of the Act and Commission Regulation 4.41(a)(1), 7 U.S.C. § 6o(1)(A) (2001) and 17 C.F.R. § 4.41(a)(1) (2002), respectively. Sidewitz violated Section 4o(1)(B) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. § 6o(1)(B) (2001) and Commission Regulation 4.41(a)(2), 17 C.F.R. § 4.41(a)(2) (2002), which does not require a showing of scienter, by virtue of the same conduct. Qi2 is liable for Sidewitz’s violations of Sections 4o(1)(A) and 4o(1)(B) of the Act, 7 U.S.C. §§ 6o(1)(A) &(B) (2001) and Commission Regulations 4.41(a)(1) and (a)(2), 17 C.F.R. §§ 4.41(a)(1) & (a)(2) (2002), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), because Qi2 is liable for the actions and/or omissions of its officers and agents under that Section’s *respondeat superior* provision.

4. In his Internet advertising, Sidewitz also presented trading performance results, which were based on simulated or hypothetical data. Section 4.41(b)(1) of the Commission’s Regulations, 17 C.F.R. § 4.41(b)(1) (2002), requires a prescribed statement of disclaimer or a statement prescribed pursuant to rules promulgated by a registered futures association, to accompany such statements of simulated performance results. Section 4.41(b)(2) of the Commission’s Regulations, 17 C.F.R. § 4.41(b)(2) (2002), requires that the disclosure be prominently displayed if the presentation of the simulated or hypothetical performance is other than oral. Sidewitz violated Commission Regulations 4.41(b)(1) and 4.41(b)(2) by failing to include any prescribed statement of disclaimer with the advertising on the Cybrlink.com website.

Qi2 is liable for Sidewitz's violations of Commission Regulations 4.41(b)(1) and 4.41(b)(2) by pursuant to Section 2(a)(1)(B) of the Act.

II. PROPOSED RESPONDENTS

5. **Roy M. Sidewitz**, who resides at 4800 Baseline Road, #E104-370, Boulder CO 80303, is currently unemployed. He is the author of the "How I Double My Money Annually In The Market" trading manual, and the developer of the Coefficient of Thrust Day Trading System and the MasterTrader Program. He is the owner and sole shareholder of Qi2. Since December 1994, he has owned and controlled the Cybrlink.com website. Sidewitz has never been registered with the Commission in any capacity.

6. **Qi2 Technologies, Inc.** is a Delaware corporation located at 4800 Baseline Road, #E104-370, Boulder CO 80303. Qi2 has never been registered with the Commission in any capacity. Qi2 was incorporated as The Cybrlink Group Inc. in April 1995 and changed its name to Qi2 in May 1999.

III. FACTS

A. Products and Services Sold through the Internet

i. "How I Double My Money Annually In The Market" Trading Manual

7. During the second half of 1998, Sidewitz wrote a manual, entitled "How I Double My Money Annually In The Market," that delineated a trading system for use in the futures and options markets. The trading advisory system articulates a methodology for trading commodity option credit spreads on the S&P 500 futures contract. Since at least late 1998, Sidewitz has solicited clients to purchase the "How I Double My Money Annually In The Market" trading manual through the Cybrlink.com website. In using the trading system, clients are first required to enter the current numerical value of the S&P 500 Index on a simple worksheet contained in the "How I Double My Money Annually In The Market" trading manual. Following instructions

on the worksheet, clients then manually calculate specific commodity options credit spread recommendations on the S&P 500 futures contract.

8. From at least late 1998 through January 2003, Sidewitz sold the “How I Double My Money Annually In The Market” trading manual, and the trading system contained therein, to the public at a cost of \$69.95 per hardback copy.

9. From at least late 1999 to late 2000, Sidewitz sent a “Developer’s Diary” to purchasers of his book “How I Double My Money Annually In The Market” once a month via an electronic-mail message on the Internet. In each “Developer’s Diary,” Sidewitz recommended a commodity options credit spread trade for the coming month that was based upon the trading system contained in the “How I Double My Money Annually In The Market” trading manual.

ii. Coefficient of Thrust Day Trading System

10. Sidewitz also developed and marketed a commodity trading system called the Coefficient of Thrust Day Trading System (“COTD”) for use in the futures and options markets. Since at least March 2000, Sidewitz has solicited clients, through the Cybrlink.com website, to purchase the COTD trading system. Clients utilizing the COTD commodity trading advisory system manually calculate specific buy and sell recommendations in the commodity futures and options markets, although the trading system is also designed to be automated using the MetaStock or TradeStation charting software.

11. From on or about March 2000 through October 2002, Sidewitz sold the COTD trading system to the public, charging fees ranging from \$995 to \$1,695.

iii. MasterTrader Program Subscription Service

12. Sidewitz developed and marketed a subscription-based commodity options trading advisory service called the MasterTrader Program (“MasterTrader”). Since at least early 2000, Sidewitz has solicited clients, via the Cybrlink.com website, to subscribe to the

MasterTrader commodity options trading advisory service, through which Sidewitz provided subscribers with specific commodity option trade recommendations via electronic-mail messages sent on the Internet. Sidewitz based these commodity options trade recommendations on analysis of various commodities' past seasonal price fluctuations that he purchased from Moore Research, an unrelated company.

13. From at least early 2000 through December 2000, Sidewitz sold the MasterTrader commodity options trading advisory service to the public, charging a fee of \$125 per month for a two-month subscription.

14. Sidewitz solicited clients from the public through advertisements on the Internet at the Cybrlink.com website. These clients were enticed by representations of substantial profits into purchasing the "How I Double My Money Annually In The Market" trading manual, the COTD trading system, and the MasterTrader commodity options trading advisory service.

B. Misrepresentations And Misleading Advertisements Concerning Hypothetical Nature of Performance

15. Sidewitz placed advertisements on the Internet, through the Cybrlink.com website, marketing the "How I Double My Money Annually In The Market" trading manual, the COTD trading system, and the MasterTrader commodity options trading advisory service. These advertisements fraudulently misrepresented that the performance results they used in the advertisements were the results of actual trading, when they were, in fact, simulated or hypothetical results. The website failed to include required warnings about the limitations of trading performance numbers based on simulated or hypothetical data.

16. The website's description of the trading system contained in the "How I Double My Money Annually In The Market" trading manual conveyed a false impression to the public that Sidewitz was actually trading according to the trading system described therein, when in fact

he was not. For example, on the website, Sidewitz represented the following to the public in advertisements about the trading system:

- “The Five investment principles that I’m about to share with you returned to me in the worst year 140% and in the best year? [sic] My Money Grew By Over 300%!”
- You don’t need to have an opinion on the direction of the market It can go up; it can go down. It doesn’t matter to you”
- “A truly effective strategy like the one I’m going to share with you makes money in bull markets, bear markets, and even in trendless, dull markets.”
- “Although past performance is no indication of future results, the accuracy rate with this strategy has been better than 80% going back to 1993 with the commensurate rate of return being in excess of 15% per month or more! All the while, risk has been clearly defined and kept to a minimum.”

17. The website’s description of the COTD trading system conveyed a false impression to the public that Sidewitz was actually trading according to the trading system, when in fact he was not. For example, on the website, Sidewitz represented the following to the public in advertisements about the trading system:

- “No overtrading – My method trades, on average, 12-15 days per month. Maybe that’s too dull for some, but it’s the way to regularly stay fresh and avoid burnout.”
- “Our personal trading interest resides in the S&P 500 futures.”
- “My method is being used in many of the 35+ main commodities markets with impressive results.”

18. The website’s description of the MasterTrader commodity options trading advisory service conveyed a false impression to the public that Sidewitz was actually trading according to the methodology upon which his options trading recommendations were based, when in fact he was not. For example, on the website, Sidewitz represented the following to the public in advertisements about the commodity option trading advisory service:

- “I like being the ‘house’; it’s much easier being the ‘house’ than finding those BIG winners, and I have the unfair advantage of starting out with 4-to-1 odds in my favor. That’s why I almost always come out on top.”
- “It’s the kind of edge that’s allowed me to have years in which all my trades, 100% of them, were winners.”

19. Based on the misleading nature of the promotional advertising material, the public was fraudulently advised that the performance results of the trading system delineated in the “How I Double My Money Annually In The Market” trading manual, the COTD trading system, and the MasterTrader commodity options trading advisory service represented Sidewitz’s actual trading, not simulated or hypothetical results.

C. Misrepresentations Concerning Profit Potential

20. Sidewitz used fraudulent and misleading statements in Internet-based promotions for the “How I Double My Money Annually In The Market” trading manual, and the trading system contained therein. These statements overstated the profit potential of the trading system and failed to adequately warn investors of the risks inherent in futures and options trading. For example, on the Cybrlink.com website, Sidewitz advertised to the public:

- “By ordering the book ‘How I Double My Money Annually In The Market’ You’ll discover:
 - How you can turn \$2500 into more than a \$2,500,000 by the end of the next decade (or sooner)
 - How easy it is to earn a monthly return of 15% or more!.....
 - How you can use THIS turnkey strategy to win, and win consistently
 - How to easily make winning trades in upward, dull and even downward markets
 - How you can have the odds in your favor 90% of the time.”
- “The book ‘How I Double My Money Annually In The Market’ provides you [*sic*] the system you need to secure a yearly return on your investment that can go up to 300% percent.”

- A web page entitled “Performance” on the Cybrlink.com website stated, “In 1999, we have been 100% accurate year-to-date. In each timeframe below, you can see the degree of success in our investment performance has also been considerable.” In the table, Sidewitz and Qi2 claimed to have been accurate “91.7% of the time,” “91.7% of the time,” “94.2% of the time” and “93.5% of the time” for the period of “One Year,” “Five Years,” “Ten Years” and “Lifetime,” respectively.

21. Sidewitz used fraudulent and misleading statements in their web promotions for the COTD trading system. These statements overstated the profit potential of the COTD trading system and failed to adequately warn investors of the risks inherent in futures and options trading. For example, on the Cybrlink.com website, Sidewitz advertised to the public:

- “High Win% - Wins exceed 50% of all trades with low drawdowns and enjoys returns that are many times the margin requirement.”
- A table on the web page advertising the COTD commodity trading system purported to show the “track record” of the system from January 1996 to September 2002. In the table, Sidewitz and Qi2 claimed to have earned a “Grand Total” return “(points only)” of “3242.50” between January 1996 and September 2002.”

22. Sidewitz used fraudulent and misleading statements in his web promotions for MasterTrader commodity options trading advisory service. These statements overstated the profit potential of MasterTrader commodity options trading advisory service and failed to adequately warn investors of the risks inherent in commodity futures and options trading. For example, on the Cybrlink.com website, Sidewitz advertised to the public:

- “All recommendations have been painstakingly researched and have at least a 90% or better likelihood of making you serious money.”
- “This Program sets you up as the ‘house’ with the odds already heavily stacked in your favor, and you are given trades that have a very high certainty of a successful outcome.”
- “Best of all, the investment returns on these positions is almost always at least 20% within the timeframe of a month or less.”

23. In fact, Sidewitz never achieved the results described in paragraphs 20 through 22 through actual trading. On the Internet website, Sidewitz presented hypothetical or simulated

performance results of the trading systems and commodity options trading advisory service without the accompaniment of a required cautionary statement.

24. The actions and omissions of Sidewitz described above were done within the scope of his employment and as an officer and agent of Qi2.

IV.

COUNT I

VIOLATIONS OF SECTIONS 40(1)(A) AND 40(1)(B) OF OF THE ACT AND REGULATION 4.41(a)(1) AND 4.41(a)(2): FRAUD BY A CTA

25. The allegations contained in paragraphs 1 through 24 above are realleged and incorporated herein by reference.

26. Since at least late 1998 to January 2003, Sidewitz has acted as a CTA because, for compensation or profit, he engaged in the business of advising others through the sale of the “How I Double My Money Annually In The Market” trading manual, the COTD trading system, which provided users with specific futures and options trading recommendations, and the MasterTrader commodity options trading advisory service, which provided his subscribers with explicit commodity option trade recommendations via electronic-mail messages sent on the Internet.

27. During the relevant time period, Sidewitz directly violated Section 40(1)(A) of the Act, 7 U.S.C. § 60(1)(A) and Commission Regulation 4.41(a)(1), 17 C.F.R. § 4.41(a)(1), in that by use of the mails or other means or instrumentalities of interstate commerce, Sidewitz knowingly or in reckless disregard, employed a device, scheme or artifice to defraud clients or prospective clients, including, but not limited to, using false and misleading advertisements, which overstated profit potential, represented hypothetical or simulated trading results as actual trading results and misrepresented Sidewitz’s trading record.

28. During the relevant time period, Qi2 is vicariously liable for violating Section 4o(1)(A) of the Act, 7 U.S.C. § 6o(1)(A) and Commission Regulation 4.41(a)(1), 17 C.F.R. § 4.41(a)(1), in that by use of the mails or other means or instrumentalities of interstate commerce, Sidewitz, while acting as an officer and agent of Qi2, knowingly or in reckless disregard, employed a device, scheme or artifice to defraud clients or prospective clients, including, but not limited to, using false and misleading advertisements, which overstated profit potential, represented hypothetical or simulated trading results as actual trading results and misrepresented Sidewitz's trading record. *See* 7 U.S.C. § 2(a)(1)(B).

29. During the relevant time period, Sidewitz directly violated Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B), and Commission Regulation 4.41(a)(2), 17 C.F.R. § 4.41(a)(2), in that by use of the mails or other means or instrumentalities of interstate commerce, he engaged in a transaction, practice, or course of business which operated as a fraud or deceit upon any client or prospective client, including, but not limited to, using false and misleading advertisements, which overstated profit potential, represented hypothetical or simulated trading results as actual trading results and misrepresented Sidewitz's trading record.

30. During the relevant time period, Qi2 is vicariously liable for Sidewitz's violations of Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B), and Commission Regulation 4.41(a)(2), 17 C.F.R. § 4.41(a)(2), in that by use of the mails or other means or instrumentalities of interstate commerce, Sidewitz, while acting as an officer and agent of Qi2, engaged in a transaction, practice, or course of business which operated as a fraud or deceit upon any client or prospective client, including, but not limited to, using false and misleading advertisements, which overstated profit potential, represented hypothetical or simulated trading results as actual trading results and misrepresented Sidewitz's trading record.

31. Each material misrepresentation or omission, and each practice or course of business that operated as a fraud or deceit during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act and Regulation 4.41(a).

COUNT II

VIOLATIONS OF COMMISSION REGULATION 4.41(b)(1) and 4.41(b)(2): FAILURE TO PROVIDE CAUTIONARY STATEMENT REGARDING LIMITATIONS OF HYPOTHETICAL TRADING RESULTS

32. The allegations contained in paragraphs 1 through 24 above are realleged and incorporated herein by reference.

33. During the relevant time period, Sidewitz violated Commission Regulation 4.41(b)(1), 17 C.F.R. § 4.41(b)(1), in that he presented the performance of a simulated or hypothetical commodity interest account, transaction in a commodity interest or series of transactions in a commodity interest of a commodity trading advisor, without accompaniment of one of the following statements:

(i) "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;" or

(ii) A statement prescribed pursuant to rules promulgated by a registered futures association pursuant to Section 17(j) of the Act.

34. During the relevant time period, Sidewitz violated Commission Regulation 4.41(b)(2), 17 C.F.R. § 4.41(b)(2) (2002), in that he presented simulated performance results without accompanying those results with the prescribed precautionary statement prominently disclosed.

35. During the relevant time period, Qi2 is vicariously liable for Sidewitz's violations of Commission Regulation 4.41(b)(2), 17 C.F.R. § 4.41(b)(2) (2002), in that Sidewitz, while acting as an officer and agent of Qi2, failed to include the above described disclaimer statements. *See* 7 U.S.C. § 2(a)(1)(B).

36. Each failure to include the above-mentioned statement of disclaimer made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.41(b)(1) and 4.41(b)(2).

V.

By reason of the foregoing allegations, the Commission deems it necessary and appropriate, pursuant to its responsibilities under the Act, to institute public administrative proceedings to determine whether the allegations set forth above are true and, if so, whether an appropriate order should be entered in accordance with Sections 6(c), 6(d) and 8a(4) of the Act, 7 U.S.C. §§ 9, 13b and 12a(4) (2001).

Sections 6(c) and 8a(4) of the Act and Commission Regulation 143.8 allow the Commission to (1) prohibit respondents from trading on or subject to the rules of any registered entities, and require all registered entities to refuse such persons all privileges thereon for such period as may be specified in the Commission's Order, (2) if the respondent is registered with the Commission in any capacity, suspend, for a period not to exceed six months, or revoke, the registration of that respondent, (3) assess against a respondent a civil monetary penalty of not more than the higher of \$110,00 for each violation, \$120,000 for violations on or after October 23, 2000, or triple the monetary gain to the respondent for each violation, and (4) require restitution to clients of damages proximately caused by the violations of the respondent.

Section 6(d) of the Act allows the Commission to enter an Order directing that the respondent cease and desist from violating the provisions of the Act and Regulations found to have been violated.

VI.

WHEREFORE, IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the allegations set forth in Section IV above be held before an Administrative Law Judge, in accordance with the Commission's Rules of Practice under the Act ("Rules"), 17 C.F.R. §§ 10.1 *et seq.* (2002), at a time and place to be set as provided by Section 10.61 of the Rules, 17 C.F.R. § 10.61, and that all post-hearing procedures shall be conducted pursuant to Sections 10.81 through 10.107 of the Rules, 17 C.F.R. §§ 10.81 through 10.107.

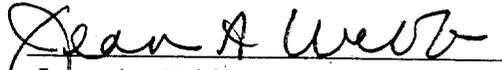
IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Complaint within twenty (20) days after service, pursuant to Section 10.23 of the Rules, 17 C.F.R. § 10.23, and pursuant to Section 10.12(a) of the Rules, 17 C.F.R. § 10.12(a), shall serve two copies of such Answer and of any documents filed in this proceeding upon John Dunfee, Chief Trial Attorney, and Grant Collins, Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC, 20581. If any Respondent fails to file the required Answer or fails to appear at a hearing after being duly served, such Respondent shall be deemed in default and the proceeding may be determined against such Respondent upon consideration of the Complaint, the allegations of which shall be deemed to be true.

IT IS FURTHER ORDERED that this Complaint and Notice of Hearing shall be served upon the Respondents personally or by registered or certified mail, pursuant to Section 10.22 of the Rules, 17 C.F.R. § 10.22.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of the investigative or prosecutorial functions in this or any factually related proceeding will be permitted to participate or advise in the decision in this matter except as witness or counsel in a proceeding held pursuant to notice.

By the Commission.

Dated: June 30, 2003



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