

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of

SAMUEL NEWMAN,

Respondent

CFTC Docket No. 04- 24

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

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that Samuel Newman ("Newman") has violated Section 4m(1) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 6m(1) (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 Newman engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of these administrative proceedings, Newman has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Newman acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Act, Making Findings and Imposing Remedial Sanctions ("Order"). Newman, without admitting or denying the findings of fact or conclusions of law herein, consents to the use of the findings contained 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 Newman does not consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, as the sole basis for any other proceeding brought by the Commission other than a proceeding brought to enforce the terms of this Order. Nor does he consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, by any other party in any other proceeding. The findings made in this Order are not binding on any other person or entity named as a defendant or respondent in this or any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

From at least November 2002 to January 2003 (“the relevant time period”), Newman solicited four clients for the purpose of trading their individual commodity futures accounts as an unregistered commodity trading advisor (“CTA”).

Newman’s clients gave him authority to direct the trading in their accounts, according to a trading method he developed, in return for a share of the trading profits. Newman’s subsequent trading of his clients’ accounts initially produced profits but later resulted in the total loss of client funds and the accrual of trading deficits.

Newman, by acting and holding himself out as a CTA without being registered as such, violated Section 4m(1) of the Act.

B. SETTLING RESPONDENT

Samuel Newman currently resides in Las Vegas, Nevada. Newman is a seventy-year-old, retired graphic artist. Newman has never been registered with the Commission in any capacity.

C. FACTS

In late 2002, Newman established the AlfaTrading.com Internet website through which he marketed a subscription-based commodity options trading advisory service. Newman included representations on the website that he had achieved a 450 percent return on the sale of commodity options in the previous eleven months.²

During the relevant period, although Newman found few clients for his subscription service, he did attract four clients whose commodity futures accounts he traded pursuant to his AlfaTrading commodity options selection method. Newman acquired one of his clients directly through the AlfaTrading Internet website and the other clients through friends or by word of mouth. At least one of Newman’s clients was a former commodity broker.

² The profit claims made on the AlfaTrading website were examined by the Division of Enforcement and found to have a factual basis. Newman’s trading strategy involved the sale of uncovered options that he deemed likely to expire without being exercised. During the approximately one-year period that the AlfaTrading website was active, it attracted few customers and closed as a result.

Newman made agreements with those clients to trade their accounts in return for a certain percentage of the account trading profits.³ To that end, Newman instructed his clients to open an account at a registered futures commission merchant (“FCM”) and to grant him discretionary control over the trading therein. Two of his clients opened an account jointly with him.⁴

Newman’s trading strategy of selling uncovered options initially proved to be profitable for his clients. However, in February 2004, the sale of identical natural gas options in each client account resulted in the total loss of his clients’ funds and the accrual of trading deficits totaling approximately \$69,000. During the relevant period, although Newman was not registered as a CTA, he held himself out as such and directed trading on behalf of clients in their commodity futures interest accounts.

IV.

LEGAL DISCUSSION

Violations of Section 4m(1) of the Act

Section 1a(6) of the Act defines a CTA as “any person who for compensation or profit, engages in the business of advising others either directly or through publications, writings or electronic media, as to the advisability of trading in any” commodity futures contract or options contract. 7 U.S.C. § 1a(6). Newman acted as a CTA because he directed trading in commodity futures trading accounts pursuant to a power of attorney. Newman was to receive a percentage of profits for the management of these accounts. Newman, therefore, acted as a CTA.

Newman was required to be registered as a CTA. Section 4m(1) makes it unlawful for a CTA, unless registered:

to make use of the mails or instrumentalities of interstate commerce in connection with his business as [a CTA]: *Provided*, That the provisions of this section shall not apply to any commodity trading advisor who, during the course of the preceding twelve months, has not furnished commodity trading advice to more than fifteen persons and who does not hold himself out generally to the public as a commodity trading advisor

7 U.S.C. § 6m. Although Newman managed fewer than 15 accounts, he held himself out to the public as a CTA. He solicited at least one prospective client from the general public through the AlfaTrading website and encouraged friends or acquaintances to solicit clients on his behalf. Newman, therefore, solicited prospective clients from the general public. Unless a CTA restricts

³ Newman’s trading fee ranged from ten to twenty percent of the account profits. However, Newman did not collect any fees under this arrangement nor did he take any customer money.

⁴ After approximately one month of trading, one of Newman’s customers removed his funds from the joint account that Newman was trading without incurring any loss of funds.

his clients to family, friends, and existing business associates, he is viewed as holding himself out to the public as a CTA. See *CFTC Interpretative Letter No. 97-26*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,026 (March 26, 1997). Accordingly, Newman acted as a CTA, without being registered as such, in violation of Section 4m(1) of the Act.

V.

OFFER OF SETTLEMENT

Newman has submitted an Offer of Settlement in which he, subject to the foregoing, acknowledges service and receipt of this Order; admits the jurisdiction of the Commission with respect to the matters set forth in the Complaint and Order; waives the filing of a complaint and notice of a 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 (2000) and 28 U.S.C. § 2412 (2000), and the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1-30 (2004), relating to, or arising from this action.

Newman stipulates that the record basis on which this Order is entered consists solely of the Order and the findings consented to in the Offer which are incorporated in this Order. Newman consents to the Commission's issuance of this Order, which makes findings, as set forth above, and orders that Newman cease and desist from violating the provision of the Act he has been found to have violated; that requires Newman pay a civil monetary penalty of \$15,000; and that Newman comply with his undertakings as set forth in his Offer and incorporated in this Order.

Newman does not consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, as the sole basis for any other proceeding brought by the Commission other than a proceeding brought to enforce the terms of this Order. Nor does he consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, by any other party in any other proceeding. The findings made in this Order are not binding on any other person or entity named as a defendant or respondent in this or any other proceeding.

VI.

FINDING OF VIOLATION

Solely on the basis of Newman's consent, as evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that Newman violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2002).

VII.

ORDER

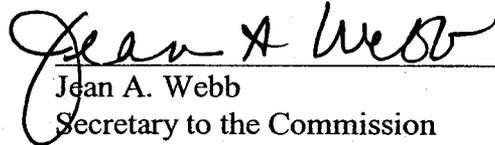
Accordingly, IT IS HEREBY ORDERED THAT:

1. Newman shall cease and desist from violating Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2002);
2. Newman shall pay a civil monetary penalty in the amount of fifteen thousand dollars (\$15,000). Newman shall pay the total amount within ten days (10) of the date of the Order 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, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of letter that display Newman's name and the docket number of the proceeding. Newman shall simultaneously transmit a copies of his cover letter and the form of payment to 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. § 9(a)(2), if Newman fails to make payment of his penalty within fifteen days (15) of the due date, he shall be automatically prohibited from the privileges of all registered entities and his registration with the Commission shall be suspended automatically until he shows 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
3. Newman shall comply with the following undertakings as set forth in his Offer:
 - A. Newman shall not: (i) apply for registration 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); or (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. **Public Statements.** By neither admitting nor denying the findings of fact or conclusions of law, Newman agrees that neither he nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in the Order, or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision shall affect Newman's (1) testimonial obligations, or (2) right to take legal positions in other proceedings to which the Commission is not a party. Newman will undertake all steps necessary to assure that all of his agents and employees under his authority and control understand and comply with this agreement.

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

By the Commission

A handwritten signature in cursive script that reads "Jean A. Webb". The signature is written in black ink and is positioned above a horizontal line.

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

Dated: September 9, 2004