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In The United States District Court  
For The Northern District Of Illinois  
Eastern Division

SEP - 1 2004

MICHAEL W. DOBBINS  
U.S. DISTRICT COURT  
**04C 5723**

Commodity Futures Trading Commission,  
Plaintiff,

vs.

Charles Lee Harris and  
Tradewinds International, L.L.C., an  
Illinois Limited Liability Company,  
Defendants.

Civil Action No:

**JUDGE HART**  
MAGISTRATE SIDNEY I. SCHENKIER

Complaint For Injunctive And  
Other Equitable Relief And  
Civil Monetary Penalties Under  
The Commodity Exchange Act

**I. Summary**

1. On information and belief, from at least September 1995 to the present (“relevant time period”), Tradewinds International, LLC (“Tradewinds LLC”) and its general partner, Charles Lee Harris (“Harris”), have solicited and accepted several million dollars from approximately 30 customers for use in trading in commodity futures and commodity options in a commodity pool entitled Tradewinds International II, L.P. and its predecessor, Tradewinds International, L.P. (collectively, “the Pool”). Harris and Tradewinds LLC have misrepresented the net asset value of the pool, failed to disclose trading losses, issued false statements to pool participants that misrepresented the balance of the pool participants’ respective interests in the Pool, and misappropriated Pool funds. In addition, Tradewinds LLC acted as a commodity pool operator (“CPO”) without the benefit of registration with the Commodity Futures Trading Commission (“Commission” or “CFTC”) and Harris acted as an associated person (“AP”) of Tradewinds LLC without the benefit of registration.

2. Specifically, Harris and Tradewinds LLC (collectively “the Defendants”) have engaged, are engaging, or are about to engage in acts or practices which violate the anti-fraud and registration sections of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 1 *et seq.* (2002), and Commission Regulations thereunder, 17 C.F.R. §§ 1 *et seq.* (2004).

3. Unless restrained and enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and in similar acts and practices, as more fully described below.

4. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, the CFTC brings this action to enjoin such acts and practices, prevent the dissipation of assets, and compel compliance with the provisions of the Act. In addition, the Commission seeks civil penalties, an accounting, restitution, disgorgement and such other equitable relief as the Court may deem necessary or appropriate under the circumstances.

## **II. Jurisdiction And Venue**

5. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

6. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e), in that the Defendants are found in, inhabit, and transact business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District.

### III. The Parties and Other Relevant Entities

7. Plaintiff Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.*, and the regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.*

8. Defendant Charles Lee Harris is 44 years old and resides in Winnetka, Illinois. He has never been registered in any capacity with the CFTC, nor has he applied for any exemption from registration. Harris is the General Partner of Tradewinds International L.P., a commodity pool organized in 1995 as an Illinois limited partnership that was succeeded by Tradewinds International II, L.P. in the fall of 2001. In addition, Harris is the president and managing member of Tradewinds LLC, and the president of Charles L. Harris International LLC.

9. Defendant Tradewinds International, LLC is an Illinois limited liability corporation that is currently not in good standing. It has never been registered in any capacity with the CFTC, nor has it applied for any exemption from registration. Harris is the president and managing member of Tradewinds LLC, which, in turn, is the General Partner of Tradewinds International II, L.P. Its current address is 560 Green Bay Road, Suite 304, Winnetka, Illinois.

10. Tradewinds International II, L.P. is a limited partnership organized under the laws of the state of Illinois in July 2001 and began operating as a commodity pool at about that same time, succeeding Tradewinds International, L.P. Its registered office is the same address of its general partner and CPO, Tradewinds LLC. It is a commodity pool engaged in the speculative trading of commodity futures and options pursuant to the trading instructions of Tradewinds LLC.

## IV. Facts

### A. Statutory Background

11. A “commodity pool” is defined in Commission Regulation 4.10(d)(1), 17 C.F.R. § 4.10(d)(1), as any investment trust, syndicate or similar form of enterprise engaged in the business of investing its pooled funds in trading commodity futures and/or commodity options.

12. A “commodity pool operator” is defined in Section 1a(5) of the Act, 7 U.S.C. § 1(a)(5), as any person engaged in a business that 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, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market.

13. An “associated person” is defined in Regulation 1.3(aa)(3), 17 C.F.R. § 1.3(aa)(3), with certain qualifications, as a natural person associated with, among other things, a CPO as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged.

14. A “participant” is defined in Commission Regulation 4.10(c), 17 C.F.R. § 4.10(c), as any person who has any direct financial interest in a commodity pool.

### B. The Fraudulent Misrepresentation of Profits and Making of False Reports

15. Since the Defendants began operating the Pool in September 1995, they have attracted at least 30 pool participants to entrust their money to them to be pooled with the funds of others and used to trade commodity futures contracts and options on commodity futures

contracts. As recently as 2003, Harris stated that the Pool contained between \$18 million and \$23 million in pool participants' funds.

16. From at least January 2003 to the present, Harris made oral misrepresentations and failed to disclose material facts to pool participants regarding the profitability of the Pool that contained the pool participants' money. Specifically, Harris represented that the Fund had annual profits of 12% for 2003 and failed to disclose the losses the Pool was incurring.

17. From at least January 2003 to July 2004, the Defendants reported the trading results of the Pool on the Pool's website showing substantial gains in the Pool's assets. The account statements were fabricated, in that the Pool had lost value and the purported account statements contained false information indicating a profitable account balance.

18. Tradewinds LLC issued false K-1 tax statements to the pool participants to support the fraudulent misrepresentations as to the profitability of the pool participants' accounts.

19. In July 2004, Harris created a videotaped recording in which he stated that he knowingly made misrepresentations as to the profitability of the Pool and account statements of the pool participants. Specifically, Harris admitted on at least 2 videotaped confessions sent to pool participants that he knew the Pool wasn't "up 12%" for 2003 as reported on the Pool's website and stated to pool participants, that the Pool actually was "down" between 8% and 18% for 2003. Harris also indicated that he unilaterally has "structured myself offshore" to an undisclosed location and moved the Pool's assets offshore in order to allegedly trade and regain the lost profits in a "nominee account" whose identity he did not disclose at financial institutions whose identities he did not disclose. His current whereabouts remain unknown. Since at least July 2004, Harris has denied pool participants access to their capital and has refused to inform

them of how much money is left in the Pool. The videotape was sent to three pool participants who provided the majority of the funding for the Pool.

20. Harris continues to mislead pool participants as to the status of their interests. Harris has not disclosed to all pool participants that he has removed funds and himself to an offshore location. Moreover, in conversations with some pool participants, Harris claims that the Pool's troubles were based on "one mistake," an "accounting error." In reality, the Pool did not experience an accounting error, but rather losses attributable to trading commodity futures and options. The Pool's commodity futures trading accounts at Refco, L.L.C. and O'Connor and Company, L.L.C., both registered futures commission merchants, indicate that the Pool had experienced significant losses trading commodity futures and options on commodity futures throughout 2003 and 2004.

21. The offering memorandum for Tradewinds International II, L.P. provided that the General Partner would receive twenty-five percent (25%) of all net profits at the end of each quarter. On information and belief, Tradewinds LLC and Harris misappropriated funds and property belonging to the Pool. Specifically, Tradewinds LLC and Harris, or entities in which they had a beneficial interest, received in excess of \$1 million from the Pool in 2003 and 2004 to which they were not entitled, in that the Pool and its commodity futures trading accounts had sustained losses during that period. Furthermore, on information and belief, Harris used Pool funds and property for personal uses.

## **V. Violations of the Commodity Exchange Act and Commission Regulations**

### **Count I**

#### **Violations of Section 4b of the Act Fraud by Misrepresentation**

22. The allegations set forth in paragraphs 1 through 21 are re-alleged and incorporated herein.
23. Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), make it unlawful for any person to cheat or defraud or attempt to cheat or defraud; or willfully make or cause to be made to other persons false reports or statements, or willfully enter or cause to be entered for other persons false records; or willfully deceive or attempt to deceive by any means whatsoever other persons in or in connection with orders to make, or the making of, contracts of sale of commodities, for future delivery, made, or to be made, for or on behalf of such other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the produce or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped or received in interstate commerce for the fulfillment thereof.
24. From at least January 2003 to July 2004, Harris cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive pool participants by misrepresenting the net asset value of the pool, failing to disclose trading losses, misrepresenting the balance of the pool participants' respective interests in the Pool, and misappropriating funds by receiving compensation to which he was not entitled and by otherwise misusing Pool property.

25. Harris also cheated or defrauded or attempted to cheat or defraud pool participants by willfully making or causing to be made false reports to the pool participants who invested money with Defendants to trade commodity futures contracts and options.

26. The actions and omissions of Harris described in this count were done within the scope of his office with Tradewinds LLC. Therefore, Tradewinds LLC is also liable for Harris' violations of Section 4b(a)(2)(i)-(iii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

27. Harris, directly or indirectly, controlled Tradewinds LLC and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Tradewinds LLC's violations alleged in this count. Harris is thereby liable for Tradewinds LLC's violations of Section 4b(a)(2)(i)-(iii) of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

28. Each material misrepresentation or omission, and each false report or statement made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(i)-(iii) of the Act.

## **Count II**

### Violations Of Section 4c(b) of the Act and Commission Regulation 33.10: Options Fraud and Misappropriation

29. Paragraphs 1 through 28 are realleged and incorporated herein.

30. From at least January 2003 to July 2004, Harris violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulation 33.10(b), 17 C.F.R. § 33.10(b), in that he cheated or defrauded or attempted to cheat or defraud or deceived or attempted to deceive pool participants by making false statements to all of the pool participants who invested money with Defendants to trade, in part, in options on commodity futures contracts.

31. From at least January 2003 to July 2004, Harris violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulation 33.10(b), 17 C.F.R. § 33.10(b), in that he made false reports to all pool participants who invested money with Defendants to trade, in part, in options on commodity futures contracts.

32. Harris' violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulation 33.10, 17 C.F.R. § 33.10, were committed in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, commodity options transactions.

33. The actions and omissions of Harris described in this count were done within the scope of his office with Tradewinds LLC. Therefore, Tradewinds LLC is also liable for Harris' violations of Section 4c(b) of the Act and Commission Regulation 33.10, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

34. Harris, directly or indirectly, controlled Tradewinds LLC and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Tradewinds LLC's violations alleged in this count. Harris is thereby liable for Tradewinds LLC's violations of Section 4c(b) of the Act and Commission Regulation 33.10, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

35. Each act of making false reports or false statements that occurred during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) and Commission Regulation 33.10, 17 C.F.R. § 33.10.

### COUNT III

#### Violations of Section 4o(1) of the Act: Fraud By A CPO And An Associated Person Of A CPO

36. Paragraphs 1 through 35 are realleged and incorporated herein.

37. During the relevant time period, Tradewinds LLC acted as a CPO in that it engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and in connection therewith, has solicited, accepted or received funds, securities or property from others for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility. During this time period, Harris acted as an AP of Tradewinds LLC, an unregistered CPO.

38. From at least January 2003 through July 2004, Defendants have violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1), in that they directly or indirectly employed or are employing a device, scheme, or artifice to defraud commodity pool participants, or have engaged or is engaging in transactions, practices or a course of business which operated as a fraud or deceit upon commodity pool participants by means of the acts and practices described in paragraphs 15 through 20.

39. In connection with such conduct, Defendants used or are using the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as a CPO and an AP of a CPO.

40. The actions and omissions of Harris described in this count were done within the scope of his office with Tradewinds LLC. Therefore, Tradewinds LLC is also liable for Harris' violations of Section 4o(1) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

41. Harris, directly or indirectly, controlled Tradewinds LLC and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Tradewinds LLC's violations alleged in this count. Harris is thereby liable for Tradewinds LLC's violations of Section 4o(1), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

42. Each act of making false reports, false statements, and material omissions that occurred 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, 7 U.S.C. § 6o(1).

#### **COUNT IV**

##### **VIOLATION OF SECTION 4m(1) OF THE ACT: FAILURE TO REGISTER AS A COMMODITY POOL OPERATOR**

43. Paragraphs 1 through 42 are re-alleged and incorporated herein.

44. A CPO is defined by Section 1a(4) of the Act, 7 U.S.C. § 1a(4), and with certain specified exceptions and exemptions, not applicable here, all CPOs are required to be registered with the Commission, pursuant to Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

45. Specifically, Tradewinds LLC was a CPO of the Pool since it was renamed in September 2001, in that it accepted and received funds from Tradewinds Pool participants for the purpose of trading commodity futures and options on commodity futures.

46. In connection with such conduct, Tradewinds LLC used the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as a CPO.

47. Tradewinds LLC engaged in these activities without the benefit of registration as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

48. Each use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO without proper registration during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

## COUNT V

### **Violation Of Section 4k(2) Of The Act: Failure To Register As An Associated Person**

49. Paragraphs 1 through 48 are re-alleged and incorporated herein.

50. With certain specified exceptions and exemptions, not applicable here, any person associated with a CPO as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves the (i) solicitation of funds, securities, or property for participation in a commodity pool or (ii) the supervision of any person or persons so engaged, must be registered with the Commission as an AP of such CPO pursuant to Section 4k(2) of the Act, 7 U.S.C. § 4k(2).

51. Harris, in his capacity as president and managing member of Tradewinds LLC, was an AP of Tradewinds LLC, an unregistered CPO, in that during the relevant time period, Harris solicited members of the public to become pool participants in the Pool for the purpose of trading commodity futures and options contracts, and also supervised all employees who may have solicited additional pool participants.

52. Harris engaged in these activities without the benefit of registration as an AP, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

53. Each act as an AP without proper registration during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

## VI. Relief Requested

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:

A. Find Defendants liable for violating Sections 4b, 4c(b), 4m(1), 4k(2) and 4o(1) of the Act, 7 U.S.C. §§ 6b, 6c(b), 6m(1), 6k(2) and 6o(1), and Commission Regulation 33.10, 17 C.F.R. § 33.10;

B. Enter an order of permanent injunction enjoining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Engaging in conduct in violation of Sections 4b, 4c(b), 4m(1), 4k(2) and 4o(1) of the Act, 7 U.S.C. §§ 6b, 6c(b), 6m(1), 6k(2) and 6o(1); and Commission Regulation 33.10, 17 C.F.R. § 33.10;
2. Directly or indirectly soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity futures or options contracts;
3. Engaging in, controlling, or directing the trading of any commodity futures or options accounts, on his own behalf or for or on behalf of any other person or entity, whether by power of attorney or otherwise;
4. Introducing customers to any other person engaged in the business of commodity futures and options trading;
5. Issuing statements or reports to others concerning commodity futures or options trading;
6. Otherwise engaging in any business activities related to commodity futures or options trading; and
7. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration from the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9), or

acting as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9).

C. Enter an order pursuant to Section 6c(a) of the Act restraining Defendants and all persons insofar as they are acting in the capacity of Defendants' agents, servants, successors, employees, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations;
2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations; and
3. Withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account, whether domestic or foreign, held by, under the control, or in the name of the Defendants;

D. Enter an order directing that Defendants provide the Plaintiff immediate and continuing access to their books and records, make an accounting to the Court of all of Defendants' assets and liabilities, together with all funds they received from and paid to investors and other persons in connection with commodity futures or options transactions or purported commodity futures or options transactions, including the names, addresses and telephone numbers of any such persons from whom he received such funds from September

1995 to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from commodity investors, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from September 1995 to and including the date of such accounting. At a minimum, the accounting should include a chronological schedule of all cash receipts and cash disbursements. In addition, each transaction shall be classified as business or personal. All business transactions shall disclose the business purpose of the transaction. The accounting shall be provided in an electronic format such as Quicken, Excel, or other accounting or electronic format spreadsheet. In addition, the Defendants shall supply true and accurate copies of any balance sheets, income statements, statement of cash flow, or statement of ownership equity previously prepared for the Defendants' business(es);

E. Enter an order requiring Defendants to disgorge to any officer appointed or directed by the Court or directly to the pool participants all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest;

F. Enter an order requiring Defendants to make restitution by making whole each and every pool participant whose funds were received or utilized by them in violation of the provisions of the Act as described herein, including pre-judgment interest;

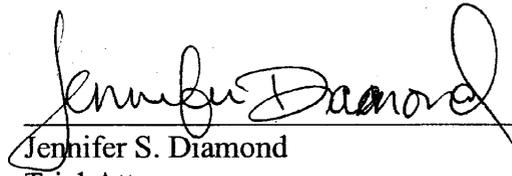
G. Enter an order requiring Defendants to pay civil penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of (1) triple the monetary gain to Defendant for each violation of the Act and Regulations or 2) \$120,000 for each violation of the Act and Regulations;

H. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (1994); and

I. Enter an Order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

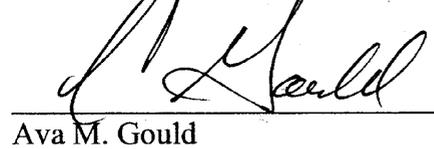
Date: September 1, 2004

Respectfully submitted,

  
Jennifer S. Diamond

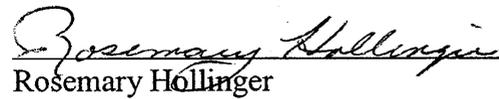
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