Jeff Le Riche, MO #46557
(jleriche@cftc.gov)
Jo Mettenburg, KS #19423
(jmettenburg@cftc.gov)
Jennifer J. Chapin, MO #50554
(jchapin@cftc.gov)
Peter L. Riggs, MO #57268
(priggs@cftc.gov)
COMMODITY FUTURES TRADING COMMISSION
Two Emanuel Cleaver II Boulevard, Suite 300
Kansas City, MO 64112
Telephone: 816-960-7744 (Mettenburg)
Facsimile: 816-960-7750

Preston DuFauchard, CA # 114795
(pdufauch@corp.ca.gov)
California Corporations Commissioner
Alan S. Weinger, CA # 86717
(aweinger@corp.ca.gov)
Deputy Commissioner
Joyce Tsai CA # 241908
Corporations Counsel
CALIFORNIA DEPARTMENT OF CORPORATIONS
1350 Front Street, Room 2034
San Diego, California 92101
Telephone: (619) 525-4043 (Tsai)
Facsimile: (619) 525-4045

Attorneys for Plaintiffs

FILED
CLERK, U.S. DISTRICT COURT
MAR 15
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

COPY

FILED
CLERK, U.S. DISTRICT COURT
MAR 15 2011
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT CALIFORNIA

UNITED STATES COMMODITY FUTURES TRADING COMMISSION, and THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA, Plaintiffs, vs. THE TRADE TECH INSITUTE, INC., TECHNOLOGY TRADING INTERNATIONAL, INC., RICHARD CARTER, AND ROBERT SORCHINI (AKA "JACK GOLD" AND "FRANK THOMAS"), Defendants.	FILED UNDER SEAL CASE NO: CV11 02163 GHK PLAx COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL MONETARY PENALTIES AND OTHER EQUITABLE RELIEF

Plaintiff, United States Commodity Futures Trading Commission ("CFTC" or "Commission") and the Commissioner of Corporations of the State of California (the "Commissioner") (collectively with the CFTC "Plaintiffs"), alleges as follows:

JURISDICTION AND VENUE

1. Section 6c(a) of the Commodity Exchange Act, (the "Act") as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008), §§ 13101-13204, 122

LODGED
11 MAR 14 PM 2:56
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY:

Stat. 1651 (enacted June 18, 2008) (the "CRA"), to be codified at 7 U.S.C. § 13a-1, 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 the Act or any rule, regulation, or order thereunder. The CFTC may bring an action in the proper District Court of the United States against such person to enjoin such practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

2. Section 6d(1) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13a-2(1), provides that whenever it shall appear to any State that interests of the residents of the State have been, are being, or may be threatened or adversely affected because of such violation of the Act, the State may bring a suit in the district courts of the United States to enjoin such acts or practices and to enforce compliance with the Act, or to obtain such other and further relief as the Court deems appropriate; this includes the State of California claims brought pursuant to Section 12(e) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 16(e), over which this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) (2006).

3. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13a-1(e), because Defendants reside in this District and have transacted business in this District.

SUMMARY

4. Since at least 2007 and continuing through the present (the "Relevant Period"), The Trade Tech Institute, Inc. ("Trade Tech"), by and through Richard Carter ("Carter") and Robert Sorchini ("Sorchini"), individually and as agents of Trade Tech, and other Trade Tech employees and agents, have engaged and continue to engage in the fraudulent promotion of and selling to the public of several systems to be used for trading commodity futures contracts ("Futures") and options on commodity futures contracts ("Options") in managed accounts ("Systems").

5. Beginning in April 2010, Sorchini and Carter, individually and in their capacity as agents, and others, continued their fraudulent promotion of and selling to the public Systems through a new entity they formed for that purpose: Technology Trading International, Inc. ("Tech Trading") (collectively with Trade Tech, Sorchini and Carter, the "Defendants").

6. While selling these Systems, Trade Tech, Tech Trading, and Sorchini make fraudulent misrepresentations to prospective clients and current clients (collectively, "Clients") about the Systems' past and potential future profitability, and track records; fail to adequately warn Clients of the risks inherent in trading Futures and Options; fail to disclose to Clients the Systems' losing performance records in Clients' managed accounts; make fraudulent performance-based

guarantees; and fail to inform Clients or obtain Clients' consent when switching Clients' managed accounts between Systems. In addition, Trade Tech publishes a misleading testimonial on its website.

7. Trade Tech and Tech Trading operate as Commodity Trading Advisors (hereafter "CTA(s)") in that they are in the business of providing advice to Clients as to the value or advisability of trading Futures and Options by, *inter alia*, soliciting the general public to purchase the Systems and by using the Systems to generate trading recommendations available to Clients that open managed accounts.

8. Sorchini operates as an "associated person" ("AP") of a CTA in that he is associated with Trade Tech and Tech Trading as a partner, officer, employee, consultant or agent and is involved in the solicitation of Clients' discretionary accounts or supervises persons engaged in the solicitation of Clients' discretionary accounts.

9. During the Relevant Period, Trade Tech and Tech Trading received over $4.5 million in fees from Clients from the sale of their Systems and continue to receive additional fees from ongoing sales. In addition, Trade Tech and Tech Trading directed the opening of over 600 managed accounts for execution of their Systems and continue to direct the opening of new managed accounts for their Clients.

10. The vast majority of Clients trading pursuant to Defendants' Systems lose money trading the Systems.

11. Consequently, Trade Tech and Tech Trading, through the acts of their agents and employees, including Sorchini, Carter, and others, and Sorchini have violated and are violating Section 4o(1)(A) and (B) of the Act, as amended, to be codified at 7 U.S.C. § 6o(1)(A) and (B).

12. Trade Tech and Tech Trading are further liable for the acts of their employees and agents pursuant to Section 2(a)(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(a)(1)(B) and CFTC Regulation ("Regulation(s)") 1.2, 17 C.F.R. § 1.2 (2010).

13. Trade Tech and Tech Trading, through the acts of its agents and employees, have violated and are violating Regulation 4.41 (a), 17 C.F.R. § 4.41 (a).

14. Additionally, Carter and Sorchini are controlling persons of Trade Tech and Tech Trading. Carter and Sorchini have not acted, and are not acting, in good faith, or have knowingly induced and are inducing, directly or indirectly, the acts constituting Trade Tech's and Tech Trading's violations of the Act and Regulations. Therefore, Carter and Sorchini are liable for Trade Tech's and Tech Trading's violations of the Act and Regulations, pursuant to Section 13(b) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13c(b).

15. Defendants' conduct also violates a provision of the California Commodity Law of 1990 (Cal. Corp. Code ("CCC") Section 29536).

16. Accordingly, the CFTC brings this action pursuant to Section 6c of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13a-1, to enjoin Defendants' unlawful acts and practices and to compel Defendants' compliance with the Act and Regulations.

17. Additionally, Pursuant to Section 6d of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13a-2, and California Corporations Code Sec. 29540 and 29544, People of the State of California, by and through the Commissioner, bring this action to enjoin the unlawful acts and practices of Defendants that violate California law and to enjoin them from engaging in certain commodity-related activities.

18. In addition, Plaintiffs seek civil monetary penalties, restitution to Clients for losses proximately caused by Defendants' fraud, disgorgement of ill-gotten gains, rescission, pre- and post-judgment interest, trading and registration bans on all Defendants, and such other relief as the Court may deem necessary or appropriate.

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

DEFINITIONS OF CERTAIN RELEVANT TERMS

20. A "managed" or "discretionary" account is an account in which the account holder gives a written power of attorney or letter of direction to someone else to execute trades in the account without prior approval of the holder.

21. A "commodity trading advisor" is 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 value of or the advisability of trading in . . . any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility." Section 1a(6) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 1a(6).

22. An "associated person" of a CTA is "any natural person who is associated . . . with . . . [a] commodity trading advisor as a partner, officer, employee, consultant, or agent . . . in any capacity which involves: (i) the solicitation of a client's or prospective client's discretionary account, or (ii) the supervision of any person or persons so engaged." Regulation 1.3(aa)(4), 17 C.F.R § 1.3(aa)(4).

23. An "introducing broker" is any person who is "engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market . . . who does not accept

any money, securities, or property . . . to margin, guarantee, or secure any trades or contracts that result or may result therefrom." Section 1a(23) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 1a(23).

24. A "futures commission merchant" is "an individual, association, partnership, corporation or trust that is engaged in soliciting or accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility; and in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property . . . to margin, guarantee, or secure any trades or contracts that result or may result therefrom." Section 1a(20) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 1a(20).

PARTIES

A. Plaintiffs

25. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act and the Regulations promulgated thereunder. The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

26. Plaintiff **People of the State of California, by and through the California Corporations Commissioner,** brings this action on behalf of the

people of California in the public interest. The Commissioner, as head of the California Department of Corporations, is empowered by legislative enactment to protect the people of California from unlawful commodity and securities transactions and activities.

B. Defendants

27. Defendant **The Trade Tech Institute, Inc.** is a California Corporation with a mailing address of 264 South La Cienega Boulevard, Suite 1122, Los Angeles, California. Since late 2008, Trade Tech has maintained an office at 8500 Wilshire Boulevard, Los Angeles, California. Trade Tech has never been registered with the Commission in any capacity.

28. Defendant **Technology Trading International, Inc.** is a California corporation with a mailing address of 264 South La Cienega Boulevard, Suite 1122, Los Angeles, California. Tech Trading maintains an office at 5420 Wilshire Boulevard, Los Angeles, California. Tech Trading has never been registered with the Commission in any capacity.

29. Defendant **Robert Sorchini** is a resident of Los Angeles, California. Sorchini, along with Carter, manages the day to day operations of Trade Tech and Tech Trading. Sorchini communicates directly with Clients using the names Jack Gold ("Gold") and Frank Thomas ("Thomas"). Sorchini has never been registered with the Commission in any capacity.

30. Defendant **Richard Carter** is a resident of Torrance, California. Carter, along with Sorchini, manages the day to day operations of Trade Tech and Tech Trading. Carter has never been registered with the Commission in any capacity.

FACTS

A. Trade Tech and Tech Trading Operations

1. The Systems

31. Trade Tech and Tech Trading are engaged in the business of providing advice to Clients as to the value or advisability of trading Futures and Options by, *inter alia*, soliciting the general public to purchase at least eight different purportedly automated Systems and by using the Systems to generate trading recommendations available to Clients who open managed accounts.

32. Sorchini is an AP of Trade Tech and Tech Trading because he is associated with Trade Tech and Tech Trading as a partner, officer, employee, consultant, or agent and directly solicits Clients to purchase a System and to open a managed account to trade the System, or supervises Trade Tech and Tech Trade salespeople who are soliciting Clients.

33. The Systems that Trade Tech and Tech Trading offer and sell to Clients generate trading signals for various Futures and Options contracts. Clients open managed accounts to receive these signals. These signals are communicated

by Trade Tech and Tech Trading, as trading orders, to the introducing broker ("IB") firms where Clients' managed accounts are held, either by instant message or automatically through a computerized trading platform called Trade Station.

34. Trade Tech offers, or has previously offered, for sale to Clients the following Systems: Trade Tech Analytics ("TTA"), Paradigm, Optimum, Expeditor, MAC, Hybrid, Daytona and Pioneer.

35. Tech Trading offers, or has previously offered, for sale to Clients the Prisma System ("Prisma").

36. Generally, the Systems sold by Trade Tech were designed with three "portfolios." Prisma was designed with four "portfolios."(Clients can trade one or more of these portfolios, depending on the size of their trading accounts.)

37. Each of the Systems sold by Trade Tech and Tech Trading was developed by one of three individuals that work (or previously worked) for Trade Tech and Tech Trading (the "Developer(s)"). The majority of the Systems sold by Trade Tech and Tech Trading were created at the request of Sorchini and/or Carter.

38. The Developers receive between $100 and $200 each time Trade Tech or Tech Trading sells access to a System created by that Developer.

39. Prior to Trade Tech or Tech Trading marketing a System, the Developers "back-test" their respective Systems, which means they apply the trading strategy of their Systems against known historical trading data. As part of

this process, the Developers optimize their Systems to take advantage of past trading patterns and trends. Back-testing involves no actual trading.

40. Live trading for any particular System occurs *only* after the first Client purchases a System, opens and funds a managed trading account, and authorizes that System to generate trading signals that are used by the IB to execute trades in the Client's managed account.

41. Generally, each of the Systems sold by Trade Tech and Tech Trading is marketed for only a few months. This is because Trade Tech and Tech Trading will stop selling a System after that System begins generating trading losses in Clients' accounts, resulting in numerous Client complaints, which usually occurs within a few months of Trade Tech and Tech Trading marketing a System. When this occurs, Sorchini and/or Carter direct the Developers to create a new System for marketing to Clients.

2. Trade Tech and Tech Trading Sales Force

42. Trade Tech and Tech Trading advertise the Systems through their respective websites and through telemarketing.

43. Trade Tech and Tech Trading advertise for salespeople on Craigslist and hire salespeople with little or no industry experience to solicit Clients, via telephone, to purchase their Systems.

44. Trade Tech and Tech Trading salespeople, whose roles are described within the two companies as "Openers" (described below) and "Closers" (described below), receive between $350 and $500 for each System that they sell.

45. Most Trade Tech and Tech Trading salespeople use pseudonyms when communicating with Clients. As described previously, Sorchini who, among other duties, works as a Closer for both companies, uses the "Gold" pseudonym when communicating with Trade Tech Clients and uses the "Thomas" pseudonym when communicating with Tech Trading Clients.

3. The Sales Process

46. Trade Tech and Tech Trading acquire sales leads by purchasing lists of telephone numbers of people residing throughout the United States. These phone numbers are loaded into automatic dialers that route calls to Trade Tech and Tech Trading salespeople.

47. Each Trade Tech and Tech Trading salesperson is expected to solicit between 200 and 400 people per day for the Systems.

48. Clients are initially contacted by Trade Tech and Tech Trading by salespeople referred to as Openers. Openers are provided scripts to read when calling Clients that contain, among other things, information about the purported past and potential future profitability of the Systems.

49. When a Client shows interest in a System, the Client is turned over to Trade Tech or Tech Trading salespeople referred to as Closers.

50. Closers provide additional information to Clients about the Systems' purported past and potential future profitability, the performance-based guarantees available with the Systems and the purchase price of the Systems. In addition, Closers direct Clients to Trade Tech's or Tech Trading's website and show Clients the Systems' various track records (the "Track Records").

51. Closers are authorized to sell the Systems for between $4,995 and $9,995.

52. In addition, Closers are authorized to offer performance-based guarantees with the Systems. Typically, these guarantees are based on the net or gross performance of a System over six months, one year, or two years.

53. After a Client agrees to purchase a System, Trade Tech and Tech Trading arrange for the Client to open a managed account at one of at least four IBs. These IBs, in turn, introduce the Client to a Futures Commission Merchant.

54. In connection with their managed accounts, Clients execute letters of direction to one of the IBs, directing that the IB execute trades in the Client's account pursuant to trading signals generated by the Systems purchased by the Client. Thus, after letters of direction are in effect, trading pursuant to the Systems occurs automatically in Clients' accounts unless and until a Client instructs his or

her IB to cease trading in his or her managed accounts pursuant to the System, or until the Client's funds are exhausted.

B. Defendants' Fraudulent Conduct

55. As part of regular business operations: (1) Defendants make fraudulent misrepresentations about the Systems' purported past and potential future profitability and Track Records; (2) Defendants fail to adequately warn of risks inherent in trading Futures and Options; (3) Defendants make fraudulent misrepresentations and omissions regarding the Systems' performance in Clients' managed accounts; (4) Defendants offer fraudulent performance-based guarantees; (5) Trade Tech switches Clients into Systems Clients did not purchase without informing the Clients or obtaining their consent; and (6) Trade Tech posts a misleading Client testimonial on its website that does not contain required disclosures.

1. Misrepresentations Regarding the Systems' Purported Past and Potential Future Profitability and Track Records

56. During the sales solicitation process, Trade Tech's and Tech Trading's salespeople (including Sorchini) mislead clients in a variety of ways about the Systems' past and potential future profitability and Track Records.

57. First, Trade Tech and Tech Trading salespeople (including Sorchini) make false oral representations to Clients about the Systems' past and potential

future profitability. Second, to buttress their claims of the Systems' past and potential future profitability, Trade Tech and Tech Trading salespeople (including Sorchini) show and discuss with Clients the Systems' various Track Records. During these discussions, Trade Tech and Tech Trading salespeople (including Sorchini) misrepresent to Clients that the data underlying these Track Records represents actual trading results. Third, the Track Records misrepresent the Systems' overall profitability.

a. Baseless and False Representations Regarding the Systems' Purported Past and Potential Future Profitability

58. During telephone calls with Clients, Trade Tech and Tech Trading salespeople (including Sorchini) paint a rosy picture of the Systems' purported past and potential future profitability, telling Clients that the Systems will yield and are yielding returns ranging between 10% and 20% per month.

59. The following are examples of statements made to Clients by Trade Tech and Tech Trading salespeople (including Sorchini), about the potential future profitability of Trade Tech's and Tech Trading's Systems:

a. A Trade Tech salesman told a Client that she would make $6,000 to $8,000 in a few weeks on a $20,000 investment using the trading signals generated by Expeditor;

b. Sorchini (using the "Gold" alias), told a Client that the TTA System would turn $15,000 into $28,000 over 14 months; and

c. A Tech Trading salesperson told a Client that, trading pursuant to Prisma's signals, a $5,000 investment would yield over $1,000 a month and had been doing so for approximately a year.

60. The following are examples of statements made to Clients by Trade Tech and Tech Trading salespeople (including Sorchini), about the *actual* past profitability of trading pursuant to the Systems:

a. A Trade Tech salesman using the pseudonym "Ben Franks" told a prospective Client that Trade Tech's Daytona System returns 17% on average per month and makes money 17 out of 22 trades;

b. A Trade Tech salesman using the pseudonym "Ken Drake" told prospective Clients that Daytona had been averaging at least 11% per month;

c. A Tech Trading salesman told a Client that Prisma had been making $1000 a month on a $5000 investment for about a year;

d. Sorchini, using the "Gold" pseudonym, told a Client that TTA generated a $2000 monthly profit on an investment of $15,000; and

e. Sorchini, using the "Gold" pseudonym, told a Client about Daytona that "literally what the system is doing on a $15,000-size account . . . is about 11% per month . . . making an average net monthly return of $2,066 . . ."

61. These statements by Trade Tech and Tech Trading salespeople (including Sorchini) are false because:

a. No live trading occurs using any given System until the first Client purchases a particular System and allows that System to trade in an account. Clients, therefore, are being solicited before any trading has occurred pursuant to the System. Accordingly, in those instances, Trade Tech,Tech Trading and Sorchini, have no information about the profits the Systems have generated or might generate;

b. In the instances where Trade Tech and Tech Trading are marketing a System that has been sold to at least one Client (and is therefore trading "live") Trade Tech, Tech Trading and Sorchini know that the System has not generated the profitable results being touted; and

c. Since the vast majority of Trade Tech and Tech Trading Clients have lost money trading pursuant to the Systems, any statements

by Trade Tech and Tech Trading salespeople that the Systems are consistently yielding or are likely to consistently yield positive monthly returns are false.

b. Misrepresentations Regarding the Nature of the Trading Results Contained in the Track Records

62. Trade Tech and Tech Trading publish on their respective websites the Systems' Track Records, which display the various Systems' purported performance.

63. Each System has its own respective web page displaying its Track Record. The Systems' Track Records are subdivided by portfolio and generally contain between one year and two years' worth of purported trading results.

64. During sales calls, Trade Tech and Tech Trading salespeople (including Sorchini) direct Clients to the portions of the Trade Tech and Tech Trading websites that publish the Track Records to view the Systems' purported performance.

65. When discussing the Track Records with Clients during sales calls, Trade Tech and Tech Trading salespeople (including Sorchini) make misleading and false representations concerning the nature of the trading results displayed in the Track Records. For example, Trade Tech and Tech Trading salespeople (including Sorchini) have told Clients that the Track Records:

a. are based on "live" trading;

b. are actual trades that have occurred in other Clients' accounts; and

c. are reflective of what Clients could expect to earn in their accounts;

66. These statements about the Track Records containing actual trading results or being reflective of "live" trading are false and misleading. The overwhelming majority of trading results displayed in the Track Records are, in fact, back-tested trading results and not live trading results.

67. Before a System is sold, the Track Records contain only back-tested trading results. When live-trading begins, Trade Tech and Tech Trading amend the Track Records to include live-trading results. These live-trading results, however, do not include commissions or other fees charged in Clients' managed accounts.

68. Because the Systems are not traded live until purchased by Clients, there is no, or very little, live-trading results displayed in the Track Records to share with Clients during the time period in which Trade Tech and Tech Trading are marketing any particular System.

69. In the instances where the Track Records contain live trading results, Trade Tech and Tech Trading salespeople (including Sorchini) further mislead

Clients by omitting to tell them what portions of the Track Records reflect live-trading and what portions of the Track Records reflect back-testing.

70. Trade Tech and Tech Trading salespeople (including Sorchini) also have misled some Clients about the "hypothetical" nature of the data contained in the Track Records. For example, Trade Tech and Tech Trading salespeople (including Sorchini) have told Clients that the Track Records:

a. Are hypothetical because the trading results shown on the Trade Tech website are not reflective of trading that had occurred in the Clients' own accounts; and

b. Are hypothetical because they are based on trades that occurred in an anonymous Client's account.

71. The statements about the "hypothetical" nature of the Track Records are false and misleading because they create the impression that live-trading has occurred, in another Client's account using the Systems, to generate all the trading results displayed in the Track Records. In fact, the Track Records are hypothetical, but not for the reasons suggested by Trade Tech, Tech Trading and Sorchini. The Track Records are hypothetical because they are based, largely (and depending when viewed by the Client, exclusively), on back-tested trading results.

c. The Track Records Misrepresent the Overall Profitability of the Systems

72. The Track Records indicate that, overall, the Systems are consistently generating profitable trades and have amassed significant trading gains over time.

73. In fact the majority of the Systems' live-trading has resulted in primarily unprofitable trades and the vast majority of Clients have lost money trading pursuant to the Systems.

74. The Track Records misrepresent and overstate the overall profitability of the Systems because the Track Records are comprised primarily of back-tested trading results.

75. Generally, the back-tested trading results displayed in the Track Records are highly profitable while the live-trading results displayed in the Track Records are unprofitable. When the back-tested trading results are displayed with the live-trading results, the Systems appear profitable, overall, even though the live-trading results are mostly unprofitable.

76. The Track Records are also misleading because none of the trading results displayed in the Track Records account for commissions or any other transaction fees that are charged to Clients' managed accounts. This omission also has the effect of overstating the overall profitability of the Systems in the Track Records.

77. The following are examples of how the Track Records, published on Trade Tech's and Tech Trading's websites, misrepresent the overall profitability of the Systems:

a. The **Mac Track Record** (as it was published on November 19, 2010) states that as of October 31, 2010, Mac has generated gross profits of $142,655.89 on a $15,000 investment over 26 months (or an average monthly profit of $5,486.76). In fact, the Mac Track Record contains 13 months of back-tested trading results, which yield $149,355,00 in gross profits (or an average monthly profit of $11,488.85) and 13 months of live trading results, which yield $6,699.11 in gross losses (or an average monthly loss of $515.32). None of the trading results displayed in the Mac Track Record include commissions or other fees charged in trading accounts, which, if included, would further increase live trading losses.

b. The **Prisma Track Record** (as it was published on December 8, 2010) states that as of November 30, 2010, Prisma has generated gross profits of $93,991.56 on a $15,000 investment over 24 months (or an average monthly profit of $3,916.32). In fact, the Prisma Track Record contains 18 months of back-tested trading results, which yield $99,856.00 in gross profits (or an average

monthly profit of $5,547.56) and six months of live trading results, which yield $5,864.54 in gross losses (or an average monthly loss of $977.42). None of the trading results displayed in the Prisma Track Record include commissions or other fees charged in trading accounts, which, if included, would further increase live trading losses.

78. The Track Records for the other Systems, published on Trade Tech's and Tech Trading's websites, follow a similar pattern to the Mac and Prisma Track Records.

2. Misrepresentations and Omissions Concerning Risks of Trading in the Futures and Options Markets

79. Most of the Trade Tech and Tech Trading salespeople do not have industry experience and salespeople do not receive training on the risks associated with Futures and Options trading.

80. In many instances, during oral sales solicitations, Trade Tech and Tech Trading salespeople fail to disclose to Clients the risk of loss inherent in trading Futures and Options.

81. In other instances, Trade Tech and Tech Trading salespeople understate the risk associated in trading Futures by overstating the effect of stop-

losses embedded in the Systems. For example, Trade Tech and Tech Trading salespeople have made the following statements:

a. Trade Tech salesperson "Franks" told a Client the following: 1) that the Systems were equipped with stop-losses that minimized any risks that might be associated with the systems; 2) that the Systems were equipped with all kinds of features to avoid losses; and 3) that the Systems shut down when losses began;

b. Sorchini, using the "Gold" pseudonym, told a Client that the Systems only risk about 4 points on every single trade, almost never stop out with the maximum stop, and that the systems have a handful of losers but they are always small ones; and

c. A Tech Trading salesman told a Client that there were stop losses embedded in Prisma that would minimize trading losses.

82. These and similar statements made to Clients by Trade Tech and Tech Trading salespeople (including Sorchini) overstate the Systems' abilities to prevent losses and mislead Clients about the risks inherent in trading Futures.

3. Misrepresentations and Omissions Regarding the Systems' Performance in Clients' Managed Accounts

83. At the same time that Trade Tech and Tech Trading salespeople (including Sorchini) are painting an extremely rosy picture about the Systems' past

and potential future profitability and showing Clients the Systems' highly profitable Track Records, they are failing to disclose to Clients the abysmal performance of Trade Tech's Systems in Clients' managed accounts.

84. Defendants know the Systems are causing losses in Clients' managed accounts because of, among other things, the following:

a. The Developers inform either Sorchini or Carter, or both, on a daily basis, of the Systems' trading results for that day;

b. Defendants receive numerous complaints from Clients regarding the Systems' performance in the Clients' managed accounts; and

c. Trade Tech has used three different Developers in designing the Systems it sells. Carter and/or Sorchini fired and replaced at least two of these Developers due to the abysmal performance of the Systems generated by those Developers.

85. Trade Tech, as a regular practice, will stop selling a System, or change a System's name, in response to negative feedback it receives from its Clients regarding the Systems' performance in Clients' managed accounts. Trade Tech omits to tell Clients that it has stopped selling particular Systems, or that it has changed the name of particular Systems, in response to negative Client feedback.

86. Additionally, in certain instances, Trade Tech and Tech Trading salespeople (including Sorchini) affirmatively misrepresent to Clients that current Clients are satisfied with the Systems and are making money using the Systems. For example:

a. Trade Tech salesperson "Wynn" told a Client that Trade Tech had a broad, diversified clientele who were doing well with Trade Tech's Systems and who were pleased over-all; and

b. A Trade Tech salesperson using the pseudonym "John Eastman" told a Client that there were numerous Trade Tech Clients that were so happy with Trade Tech's System that they had referred friends and family to Trade Tech.

4. Trade Tech's and Tech Trading's Fraudulent Performance-based Guarantees

87. Trade Tech and Tech Trading salespeople (including Sorchini) offer, during the course of their sales solicitations, performance-based guarantees promising the refund of the purchase price of any given System if the System is not profitable over a specified trading period.

88. Trade Tech and Tech Trading salespeople (including Sorchini) are authorized to offer, and actually offer, refunds of the purchase price of a System based on the net or gross performance of any given System over a specified trading

period. The trading period on which the guarantees are based varies (depending on what the salespeople can negotiate with Clients), but usually spans between six months and two years.

89. Clients are eligible to request refunds pursuant to these performance-based guarantees only after permitting the System to make every trade generated by the System in their accounts for the requisite trading period.

a. Performance-based Guarantee Downplays Risk Associated with Systems

90. Trade Tech's and Tech Trading's performance-based guarantees downplay the level of risk associated with trading Futures. Specifically, Trade Tech's and Tech Trading's performance-based guarantees, coupled with their extremely rosy picture of the Systems' past and potential future profitability and highly profitable Track Records, misrepresent the existence of the substantial risks inherent in Futures and Options trading.

91. Trade Tech and Tech Trading salespeople (including Sorchini) promote their performance-based guarantees in a manner that minimizes the risks associated with Futures and Options trading pursuant to the Systems. For example:

a. Sorchini, using the "Gold" pseudonym, told a Client "You start with $15,000 . . . If at the end of 12 full months, if there's anything short of that same $15,000, you will receive a full refund of the

cost of the system . . . It's never happened because the system does evolve like the market does;"

b. Trade Tech salesperson "Franks" told a Client that the Client would be entitled a refund if the Client's managed account did not show a profit after six months and that the money for a refund would be there because "the company owns oceanfront property in Beverly Hills."

92. Additionally, Sorchini distributed a script that was read to Clients by Trade Tech salespeople that states "[i]f the Daytona System isn't Net profitable after a FULL 24 months of trading you will receive a full refund of the entire $7995 that you paid for the Daytona System. If that happened you still own lifetime access to the system even though we fell short. We have never fallen short before and frankly, we are not starting with you."

b. Trade Tech's Refund Process Acted as a Fraud on Clients

93. In addition to minimizing the risk of loss associated with Futures trading, Trade Tech's performance-based guarantees, as well as the manner in which Trade Tech processes refund requests pursuant to the performance-based guarantees, act as a fraud on Clients.

94. In some instances, Trade Tech's performance-based guarantees are completely worthless because the Systems cause trading losses so rapidly that

Clients risk losing all their trading capital before they are eligible to pursue a refund.

95. Although numerous Trade Tech Clients request refunds pursuant to the performance-based guarantees, Trade Tech often lacks sufficient funds to honor Clients' refund requests in a timely manner.

96. Trade Tech has lulled some Clients who have made refund requests by asking these Clients to continue trading their Systems and/or offering these Clients the opportunity to utilize another of Trade Tech's Systems, free of charge, in the Clients' managed accounts.

97. Because this lulling activity causes Clients to trade pursuant to the Systems longer than they otherwise may have, Clients are put at greater risk of losing money in their managed accounts and, as a result, may suffer additional trading losses.

98. In addition, Trade Tech salespeople, in response to Clients' requesting refunds, systematically ignore, deny, unreasonably delay, and/or berate Clients that request refunds.

5. Trade Tech Switched Clients to a Different System without Clients' Knowledge or Consent

99. In December 2009, Trade Tech instructed the IBs at which Clients maintained their managed accounts to switch all existing Clients from the System they were trading at that time to Mac.

100. Upon information and belief, Trade Tech made this switch without informing its Clients and without obtaining the Clients' consent to switch Systems. Upon information and belief, many of these Clients, to date, are unaware that their managed accounts are trading a System different than the one they purchased.

6. Trade Tech's Client Testimonial

101. On its website, Trade Tech publishes, under the "Testimonial" tab, a Client email, dated June 24, 2009, which states:

> Just a quick note to say that my trading account is up and running and active . . . since last Friday, when [my account] started trading, the account has gained a net of $787.50. Obviously I understand that no system has a perfect batting average and there will be losses and dips, but this certainly is an excellent start and I'm very impressed and pleased with Trade Tech so far. . . . I ended the month at $18,865 up from $16,400 last week. Hopefully August will continue the momentum.

102. With regard to this testimonial, Trade Tech's website does not prominently disclose 1) that the testimonial may not be representative of the experience of other Clients; or 2) that the testimonial is no guarantee of future performance or success.

103. In reality, the testimonial email contained on Trade Tech's website is not reflective of even this Client's (the testimonial's author) experience with Trade Tech. Beginning in August 2009, this Client began alerting Trade Tech that the System he purchased (Expeditor) was causing significant losses in his account. By early October 2009, this Client ceased trading pursuant to this System because of the losses generated by the System in his managed account. In December 2009, the Client demanded that Trade Tech issue him a refund for the purchase price of the System, which the Client finally received from Trade Tech in July 2010.

C. Carter and Sorchini Control Trade Tech and Tech Trading

104. At both Trade Tech and Tech Trading, Carter is responsible for Trade Tech's and Tech Trading's operations.

105. Carter's responsibilities include, *inter alia*, managing the merchant accounts, finances, the interviewing and hiring of salespeople, and the hiring and supervision of Developers.

106. Carter controls Trade Tech and Tech Trading. He has knowingly induced, directly or indirectly, the acts described above and continues to knowingly induce, directly or indirectly, ongoing conduct of Trade Tech and Tech Trading.

107. Sorchini manages the day to day activities of Trade Tech and Tech Trading.

108. Sorchini's responsibilities include, *inter alia*, hiring, training, and supervising Trade Tech's and Tech Trading's salespeople and other staff and handling Client service issues.

109. In communications with Clients, Sorchini, using the "Gold" pseudonym, refers to himself as Trade Tech's President.

110. Sorchini has knowingly induced, directly or indirectly, the acts described above and continues to knowingly induce, directly or indirectly, ongoing conduct of Trade Tech and Tech Trading.

D. Sorchini and Carter Actively Participated in the Above-Described Conduct

111. Sorchini and Carter actively participated in the conduct described in this Complaint by personally engaging in the conduct, or by directing, condoning, approving, or facilitating the Trade Tech or Tech Trading employees (including salespeople and Developers) who engaged in the conduct.

E. Trade Tech and Tech Trade's Fraudulent Operations are Ongoing

112. On information and belief, Trade Tech's and Tech Trading's operations are ongoing.

VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE

VIOLATIONS OF SECTIONS 4o(1)(A) and (B) OF THE ACT, AS AMENDED BY THE CRA, TO BE CODIFIED AT 7 U.S.C. § 6o(1)(A) AND (B), and REGULATION 4.41(A):

COMMODITY TRADING ADVISOR FRAUD

113. The allegations set forth in paragraphs 1 through 112 are realleged and incorporated herein by reference.

114. Trade Tech and Tech Trading act as CTA's in that, for compensation or profit, they engage in the business of advising others as to the value or the advisability of trading in Futures.

115. Sorchini acts as an AP of a CTA in that he is associated with Trade Tech and Tech Trading as a partner, officer, employee, consultant or agent and is involved in the solicitation of Clients' discretionary accounts or supervises persons engaged in the solicitation of Clients' discretionary accounts.

116. Trade Tech and Tech Trading, through the acts of their agents and employees, including Sorchini, Carter, and others, and Sorchini have knowingly and/or with reckless disregard for the truth engaged in conduct that violates Sections 4o(1)(A) and (B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6o(1)(A) and (B), in that, by use of the mails or other means or instrumentalities of interstate commerce, they directly or indirectly employ a device, scheme, or artifice to defraud Clients or Clients, and they engage in transactions, practices or courses of business that operate as a fraud or deceit upon such persons. The devices, schemes, artifices, transactions, practices or courses of business include, but are not limited to, making false and misleading statements

about the purported past and potential future profitability and Track Records of the Systems they are selling, failing to adequately warn of the risks inherent in trading Futures and Options, failing to inform Clients of the Systems' abysmal performance in Clients' managed accounts, offering false performance-based guarantees, and switching trading in Clients' managed accounts to a different System without informing Clients of the switch or obtaining their consent.

117. Trade Tech's and Tech Trading's conduct also violates Regulation 4.41(a)(1)-(2), 17 C.F.R. § 4.41(a)(1)-(2), in that as CTAs, they advertised in a manner that employs a device, scheme or artifice to defraud Clients or prospective Clients, involve transactions, practices, or courses of business which operate as a fraud or deceit upon such persons as described in the preceding paragraph;

118. Trade Tech has violated Regulation 4.41(a)(3), 17 C.F.R. § 4.41(a)(3), in that, as a CTA, Trade Tech referred to a testimonial on its website without prominently displaying the requisite disclosures.

119. Each material misrepresentation or omission made during the Relevant Period including, but not limited to, those specifically alleged herein, constitutes a separate and distinct violation of Section 4o(1)(A) and (B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6o(1)(A) and (B), and Regulation 4.41(a), 17 C.F.R. § 4.41(a).

120. The foregoing acts, omissions and failures of Carter, Sorchini, as well as other Trade Tech and Tech Trading employees and agents, occurred and are occurring within the scope of their employment with Trade Tech and Tech Trading; therefore, Trade Tech and Tech Trading are liable for these acts, omissions and failures pursuant to Section 2(a)(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2.

121. Carter and Sorchini directly or indirectly control Trade Tech and Tech Trading, and did not act, and are not acting, in good faith, or knowingly induced, and are knowingly inducing, directly or indirectly, the acts constituting Trade Tech's and Tech Trading's violations, and are thus liable for Trade Tech's and Tech Trading's violations of Sections 4o(1)(A) and (B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6o(1)(A) and (B), and Regulation 4.41(a), 17 C.F.R. § 4.41(a).

VIOLATIONS OF CALIFORNIA LAW

COUNT TWO

WILLFUL OMISSION OF MATERIAL FACTS AND WILLFUL MAKING OF UNTRUE STATEMENTS UNDER CCC SECTION 29536

122. Plaintiffs incorporate by reference paragraphs 1 through 122 of this complaint as though fully set forth herein.

123. CCC Section 29536 provides:

> It is unlawful for any person, directly or indirectly, in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into, a commodity, commodity contract, or commodity option to do any of the following:
>
> a) To willfully employ any device, scheme, or artifice to defraud.
>
> b) To willfully make any false report, enter any false record, make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.
>
> c) To willfully engage in any transaction, act, practice, or course of business which operates or would operate as a fraud or deceit upon any persons.
>
> d) To willfully misappropriate or convert the funds, security, or property of any other person.

124. Defendants willfully omitted and willfully made untrue statements of material facts and engaged in fraudulent schemes in connection with the purchase and sale of, the offer to sell, the offer to purchase, the offer to enter into, and the entry into, commodities and commodity contracts in violation of CCC Section 29536.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs respectfully request that this Court, as authorized by Section 6c of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13a-1, and pursuant to its own equitable powers, enter:

a. An order finding that Defendants violated Sections 4o(1)(A) and (B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6o(1)(A) and (B), and Regulation 4.41(a), 17 C.F.R. § 4.41(a);

b. Orders of preliminary and permanent injunction prohibiting Defendants, and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any Defendant, including any successor thereof, from engaging, directly or indirectly, in conduct in violation of Sections 4o(1)(A) and (B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6o(1)(A) and (B), and Regulation 4.41(a), 17 C.F.R. § 4.41(a);

c. an order finding that the Defendants violated CCC Sections 29536;

d. an order of permanent injunction prohibiting the Defendants from engaging in conduct violative of the Section of the CCC that they were found to have violated;

e. An order of preliminary injunction and an order of permanent injunction prohibiting Defendants, and any other person or entity associated with them, including any successor, thereof, from engaging in conduct violative of CCC Section 29536;

f. An order of permanent injunction prohibiting Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in

active concert or participation with any Defendants, including any successor thereof, from, directly or indirectly,

1. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1a);

2. Entering into any transactions involving Futures, Options, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32,1(b)(1)), (commodity options), and/or foreign currency (as described in Section 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(B) and 2(c)(2)(C)(i)) (forex contracts) for their own personal account or for any account in which they have a direct or indirect interest;

3. Having any Futures, Options, commodity options, and/or forex contracts traded on their behalf;

4. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving Futures, Options, commodity options, and/or forex contracts;

5. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any Futures, Options, commodity options, and/or forex contracts;

6. Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9);

7. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a)), agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9); and

8. Provided further, however, that subsections 2. through 5. only apply to agreements, accounts, contracts, and transactions that are subject to the jurisdiction of the Commission.

g. Enter an order requiring Defendants, as well as any successors to Defendants, to disgorge to any officer appointed or directed by the Court all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived,

directly or indirectly, from acts or practices that constitute violations of the Act, as amended, or the Regulations, or the CCC, as described herein, including pre-judgment interest;

h. Enter an order directing Defendants and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the Clients whose funds were received by them as a result of the acts and practices which constitute violations of the Act, as amended, or the Regulations, or the CCC, as described herein;

i. Enter an order requiring Defendants to make full restitution to every person or entity whose funds Defendants received or caused another person or entity to receive, from the acts or practices that constitute violations of the Act, as amended, or the Regulations, or the CCC, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

j. Enter an order requiring Defendants to pay civil monetary penalties under the Act, as amended, to be assessed by the Court, in amounts of not more than the higher of: (1) triple the monetary gain to Defendants for each violation of the Act, as amended, or Regulations;

or (2) a penalty of $130,000 for each violation committed between October 23, 2004 and October 22, 2008 and $140,000 for each violation committed on or after October 23, 2008 and for each violation of the CCC Sections 29520 and 29536 as authorized by CCC Section 29544;

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

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

Date: 3/14/11

Respectfully submitted,

Jo Mettenburg
jmettenburg@cftc.gov
Senior Trial Attorney
Commodity Futures Trading Commission
Two Emanuel Cleaver II Boulevard, Ste 300
Kansas City, MO 64112
Telephone: 816-960-7744
Facsimile: 816-960-7750 (fax)

Joyce Tsai
jtsai@corp.ca.gov

Corporations Counsel and Local Counsel to CFTC
California Department of Corporations
1350 Front Street, Room 2034
San Diego, California 92101
Telephone: (619) 525-4043
Facsimile: (619) 525-4045