



2. Since settling with the Commission, Coleman has resumed engaging in fraudulent solicitations, particularly through e-mail and electronic newsletters. Through the use of misleading statements and money-back guarantees, Coleman falsely represents that his trading systems and advisory service generate huge profits with little risk. Coleman also misrepresents that he has personally made substantial profits through futures trading.

3. Coleman has engaged, is engaging, and is about to engage in acts and practices which violate the anti-fraud requirements set forth in Sections 40(1) of the Act, 7 U.S.C. § 60(1) (1994), and Sections 4.41 and 4.16 of the Commission's Regulations, 17 C.F.R. §§ 4.41 and 4.16 (1998). Coleman's actions also violate the May 1, 2000 Order. In violating the May 1, 2000 Order, Coleman is also violating Section 6c of the Act, 7 U.S.C. § 13a-1 (1994).

4. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (1994), the Commission brings this action to enjoin such acts and practices, and to compel compliance with the provisions of the Act, the Commission's Regulations, and the Commission's May 1, 2000 Order. In addition, the Commission seeks restitution, disgorgement, civil penalties, and such other equitable relief as the Court may deem necessary and appropriate.

5. Given Coleman's pattern of fraudulent activity, unless restrained and enjoined by this Court, the defendant is likely to continue to engage in the acts and practices alleged in this Complaint, as more fully described below.

## **II. JURISDICTION AND VENUE**

6. The Act prohibits fraud in connection with the commodity futures and options market and establishes a comprehensive system for regulating the purchase and sale of commodity futures contracts and options. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (1994), 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.

7. Venue properly lies with the Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e) (1994), in that the defendants are found in, inhabit, or 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**

8. Plaintiff Commission is an independent federal regulatory agency charged with the responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (1994), and the Regulations promulgated under it, 17 C.F.R. §§ 1 *et seq.* (1998).

9. Defendant Ellery Coleman is an individual who resides and maintains his business at 133 Bunker's Trail, Warner Robins, Georgia 31088. Coleman has never been registered with the Commission in any capacity. At all times material to this Complaint, Coleman has transacted business in the Middle District of Georgia.

### **IV. FACTS**

#### **The Commission's Cease and Desist Order of May 1, 2000**

10. On May 1, 2000, the Commission entered an order by consent finding that Coleman falsely claimed that his trading systems and advisory service generated huge profits and that he had personally made substantial profits through futures trading. The May 1, 2000 Order required Coleman to cease and desist from violating Sections 4b(a)(i) and (iii) and 4c(1) of the Commodity Exchange Act (the "Act"), as amended 7 U.S.C. §§ 6b(a)(i) and (iii) and 6c(1) (1994), and Section 4.41(a) of the Commission's Regulations, 17 C.F.R. § 4.41(a) (1999).

11. Under the terms of the Order, Coleman paid a civil penalty of \$10,000, and agreed to comply with certain undertakings. (A copy of the May 1, 2000 Order is attached as Exhibit 1).

12. At the time the Commission accepted Coleman's offer of settlement and entered the Order, Coleman had altered his website to comply with the Act and the Commission's Regulations.

### **Defendant's Activities Since the May 1, 2000 Order**

13. As discussed in detail below, following entry of the May 1, 2000 Order, Coleman again altered his website, adding misleading money-back guarantees and making inconspicuous the disclaimer that is required by the Commission's Regulations concerning performance claims derived from hypothetical or simulated trading. Since the Order was entered, Coleman has also made, through newsletters and e-mails, false statements that his activities have been approved or in some respect passed upon by the Commission and false claims that he has achieved substantial profits by following his own recommendations in trading his personal account.

14. Coleman sells various products and services to assist customers in "daytrading" S&P 500 futures, including computer-run commodity trading systems, and subscriptions to an advisory service that provides specific trading recommendations. He sells these products through his Internet website, [www.choicedaytrades.com](http://www.choicedaytrades.com), personal e-mails to customers, and newsletters he sends to his subscribers and members of his Yahoo Group, "DayTradingSecrets." Since Coleman founded "DayTradingSecrets" on March 29, 2000, the Yahoo Group has grown to over 4, 300 members.

15. Coleman's computer-run commodity trading systems include the S&P Savvy, the Reliable Pattern Match ("RPM"), and Chain Reaction. Currently, Chain Reaction is not sold

through the website, but Coleman has offered it to customers via e-mail. Purchasers of the trading systems receive computer software, a manual for use in trading S&P 500 futures, and access to online training. Customers purportedly use these trading systems by entering each day's opening, high, low, and closing prices, after which the systems generate three to four "scenarios" for the next day's trading, including specific entry and exit prices.

16. Coleman also sells ChoiceDaytrades, a subscriber service through which customers receive specific trading recommendations via e-mail. The ChoiceDayTrades recommendations are delivered daily, sometimes up to ten times per day, depending on market conditions. On the website, Coleman claims that he relies on a trading system to inform the recommendations he makes to Choice Daytrades subscribers, but that he also exercises "some discretion" in selecting the recommended trades. According to Coleman, over 60 customers have purchased his products since the date of the May 1, 2000 Order. These services are sold on a quarterly or annual basis, with prices ranging from \$2450 to \$3995 for an annual subscription.

### **Coleman's Sales Fraud**

#### Claims Concerning His Own Trading

17. Since the May 1, 2000 Order, Coleman has represented in newsletters and e-mails to customers that he uses his trading systems and his own discretion to trade his personal S&P futures account, and that he has made significant profits. For instance:

- (a) In a May 10, 2000 newsletter Coleman wrote, "Is your discretion better than your [trading] system? Mine usually is, but I've been trading for a long time." He went on to write, "The June S&P opened at 1439.50, above the previous day's high a little. It then sold off to 36.00 and I recommended selling 38.40. ...I had to wait until almost noon EST before I was able to get in. We sold 1427.40, taking our profits much too early at 23.10."
- (b) In a newsletter dated May 19, 2000, Coleman said, "When the market broke down to 54.00, I placed an order to sell 57.90 and when we were

filled I recommended covering at 49.10. The market stalled a bit before reaching there so I decided to take profits at 51.60.”

- (c) On February 22, 2001, Coleman told a customer in an e-mail, “yes I am making a net profit using my system.”
- (d) In a March 21, 2001 newsletter Coleman wrote, “We were very patient most of the day and sold 1181.00 at 2:45 EST, about 30 minutes after the interest rate cut was announced. We took profits at 1164.50, a little early, but I was happy with it.”

18. These claims are false. In fact, Coleman did not make the trades that he claims to have made, nor has he been successful in what little trading he has done. Records show that Coleman has traded on only two days since the May 1, 2000 Order, and each of the trading days resulted in losses. He lost \$37.50 trading on December 8, 2000, and lost \$137.50 trading on January 26, 2000.

#### General Claims Concerning Profits and Inadequate Disclaimers

19. The May 1, 2000 Order states that, “Coleman shall not present the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest or series of transactions in a commodity interest unless such performance is accompanied by the following statement, as required by 17 C.F.R. § 4.41(b):

Hypothetical or simulated performance results have certain inherent limitations. Unlike an actual performance record, simulated results do not represent actual trading. Also, since the trades have not actually been executed, the results may have under- or over-compensated for the impact, if any, of certain market factors, such as lack of liquidity. Simulated trading programs in general are also subject to the fact that they are designed with the benefit of hindsight. No representation is being made that any account will or is likely to achieve profits or losses similar to those shown.

In doing so, Coleman shall clearly identify those hypothetical or simulated performance results which were based, in whole or in part, on hypothetical results.”

20. Coleman’s website, newsletters, and e-mails to customers represent that his advisory service and trading systems have generated extraordinary profits. For example:

- (a) When describing his Chain Reaction program in an e-mail to a customer Coleman stated, "It is very similar to S&P Savvy in the way it works but it enters and exits a little differently and works much better. It's up \$58,000 per contract for the March contract." Coleman claimed that Chain Reaction during the month of March 2001 "has over 60% winners in the big S&P and 70% in the Emini."
- (b) In a newsletter dated March 21, 2001, Coleman claimed that, "S&P Savvy was up \$50,900 for the December contract with a \$4825 drawdown and 65% winners. For the March 2001 contract, it made \$55,950 with only a \$3650 drawdown and 73% winners. About 8 months ago we started using a slightly larger stop which has resulted in not only more profits but lower drawdown as well."
- (c) Coleman's website contains similar claims concerning profit:
  - "Day Trading the S&P 500" through Choice Daytrades -- "\$131,225 per contract in 2000"
  - S&P Savvy "\$50,875 for June 2000 contract"
  - S&P Savvy "\$-5,125 for September 2000 contract"
  - S&P Savvy "\$37,225 for December 2000 contract"

21. The above profit claims and others are based on hypothetical trading, not actual trading, but are not accompanied by the required risk disclosure statement. Some of Coleman's e-mail solicitations contain no risk statements at all. Some electronic newsletters contain a risk disclosure statement but do not have the disclosure language required by the Order and Commission Regulation 4.41(b). While the website contains the required disclaimer language, to find it a customer must proceed through to the last page of a given section and click on a small icon. In contrast, at the time the Commission accepted Coleman's offer of settlement and entered the May 1, 2000 Order, users of Coleman's website were initially presented with a page that contained the 4.41 disclaimer language, and were not permitted to view the contents of the website until they had clicked on an icon stating that they had read the disclaimer and understood its contents.

### Misleading Guarantees

22. Through the use of money-back guarantees, Coleman implies that his products will earn significant profits with no risk. These guarantees include the following:

- (a) On his website and in a newsletter Coleman stated, “Guarantee: If Choice Day Trades does not make at least more than you pay for a quarterly subscription within just the first week, we will refund your full subscription price. That's how confident I am in my recommendations.”
- (b) In an electronic newsletter dated March 21, 2000, Coleman wrote concerning his S&P Savvy System: “Guarantee: If S&P Savvy does not show a profit for the current June contract, we will refund your full purchase price. That's how confident I am in this system. S&P Savvy makes about equal profits on the long and short side; it does not favor either, so you don't have to worry whether we are in a bull market or bear.”
- (c) In an e-mail to a customer dated February 23, 2001, Coleman wrote: “If you have TradeStation, you can lease my best system (Chain Reaction - not shown on website) for \$250 per month. If it does not generate a handsome profit for you, I will refund your money. You can be certain that I will give you the refund or you could report me to the CFTC and I would get into trouble again. You will never get an offer this good.”

23. These implied profit claims are false. Customers have experienced significant losses using Coleman’s products, and some have sought and received refunds from Coleman. Additionally, in response to a subpoena issued by the Commission, Coleman failed to substantiate these implied profit claims.

#### Representations That His Website Has the Approval of the Commission

24. Coleman made representations in an e-mail to a customer implying that the CFTC had reviewed and substantiated certain contents of his website. Coleman wrote: "Unfortunately my agreement with the CFTC prevents me from discussing the matter. I can say this: I provided the CFTC and the FTC with additional information and that my website and everything stated on it are now in full compliance and completely true.... Take a look on my site at the testimonials. You can be sure the CFTC has checked them out and that they are from real people. Some of them have e-mail addresses and you can contact them."

25. This statement falsely represents that his website and testimonials had the approval of the Commission, or that his claims have in some respect been passed upon by the Commission.

## **V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

### **COUNT I**

#### **VIOLATIONS OF SECTION 40(1) OF THE ACT, 7 U.S.C. § 60(1): FRAUD BY A COMMODITY TRADING ADVISOR**

26. Paragraphs 1 through 25 are re-alleged and incorporated herein.

27. Section 1a(6) of the Act, 7 U.S.C. § 1a(6), defines a CTA as any person who, *inter alia*, 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.

28. Section 40(1) of the Act, 7 U.S.C. § 60(1), makes it unlawful for a CTA, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly – (A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

29. By virtue of the conduct described in paragraphs 1 through 5 and 10 through 25 above, Coleman, while acting as a CTA, by using means or instrumentalities of interstate commerce, employed devices, schemes or artifices to defraud clients or prospective clients and engaged in transactions, practices or courses of business which operated as a fraud or deceit upon clients or prospective clients, in violation of section 40(1) of the Act, 7 U.S.C. § 60(1).

30. Each fraudulent misrepresentation and omission by Coleman, including those specifically alleged herein, are alleged as separate and distinct violations of section 40(1) of the Act, 7 U.S.C. § 60(1).

### COUNT II

#### VIOLATIONS OF COMMISSION REGULATION 4.41(a), 17 C.F.R. § 4.41(a): ADVERTISING IN FRAUDULENT MANNER

31. Paragraphs 1 through 30 are re-alleged and incorporated herein.

32. Commission Regulation 4.41(a), 17 C.F.R. § 4.41(a), makes it unlawful for a CTA, or any principal thereof, to advertise in a manner which: (1) employs any device, scheme or artifice to defraud any client or prospective client; or (2) involves any transaction, practice or course of business which operates as a fraud or deceit upon any client or any prospective client.

33. By virtue of the conduct described in paragraphs 1 through 5 and 10 through 25 above, Coleman while acting as a CTA, makes fraudulent representations in his advertising and promotional material, in violation of section 4.41(a) of the Commission's Regulations, 17 C.F.R. § 4.41(a).

34. Each fraudulent misrepresentation and omission by Coleman in his advertising and promotional material, including those specifically alleged herein, are alleged as separate and distinct violations of section 4.41(a) of the Commission's Regulations, 17 C.F.R. § 4.41(a).

### COUNT III

#### VIOLATION OF COMMISSION REGULATIONS 4.41(b), 17 C.F.R. § 4.41(b) FAILURE TO PROVIDE CAUTIONARY STATEMENT REGARDING LIMITATIONS OF HYPOTHETICAL TRADING RESULTS

35. Paragraphs 1 through 34 are re-alleged and incorporated herein.

36. Regulation 4.41(b), 17 C.F.R. § 4.41(b), makes it unlawful for any person to present the performance of any simulated or hypothetical commodity interest account,

transaction in a commodity interest or series of transactions in a commodity interest of a commodity pool operator, CTA, or any principal thereof, unless such performance is accompanied by a prescribed cautionary statement concerning the limitations of simulated or hypothetical trading results.

37. By virtue of the conduct described in paragraphs 19 through 21 above, Coleman, while acting as a CTA, has presented the performance of simulated and hypothetical commodity interest accounts in violation of Section 4.41(b) of the Regulations, 17 C.F.R. § 4.41(b).

38. Each presentation by Coleman of the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest or series of transactions in a commodity interest, not accompanied by the prescribed cautionary statement, including those specifically alleged herein, are alleged as separate and distinct violations of section 4.41(b) of the Commission's Regulations, 17 C.F.R. § 4.41(b).

#### COUNT IV

##### VIOLATION OF COMMISSION REGULATIONS 4.16, 17 C.F.R. § 4.16 PROHIBITED REPRESENTATIONS OF COMMISSION APPROVAL

39. Paragraphs 1 through 38 are re-alleged and incorporated herein.

40. Regulation 4.16, 17 C.F.R. § 4.16, makes it unlawful for any commodity pool operator, CTA, principal thereof, or person who solicits therefore to represent or imply in any manner whatsoever that such commodity pool operator or CTA has been sponsored, recommended or approved, or that its abilities or qualifications have in any respect been passed upon by the Commission, the Federal Government, or any agency thereof.

41. By virtue of the conduct described in paragraphs 24 and 25 above, Coleman, while acting as a CTA, made representations that his website and testimonials had the approval

of the Commission, or have been passed upon by the Commission, in violation of Section 4.16 of the Regulations, 17 C.F.R. § 4.16.

COUNT V

VIOLATION OF THE COMMISSION'S ORDER OF MAY 1, 2000 AND  
SECTION 6c OF THE ACT

42. Paragraphs 1 through 41 are re-alleged and incorporated herein.

43. On May 1, 2000, the Commission entered an order by consent requiring defendant to cease and desist from violating Sections 4b(a)(i) and (iii) and 4o(1) of the Commodity Exchange Act (the "Act"), as amended 7 U.S.C. §§ 6b(a)(i) and (iii) and 6o(1) (1994), and Sections 4.41(a) of the Commission's Regulations, 17 C.F.R. § 4.41(a) (1999). Coleman also agreed to comply with various undertakings, including:

- Coleman shall not misrepresent, expressly or by implication the performance profits or results achieved by, or the results that can be achieved by, users, including himself, of any commodity futures or options trading system or advisory service.
- Coleman shall not present the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest or series of transactions in a commodity interest unless such performance is accompanied by the following statement, as required by 17 C.F.R. § 4.41(b):

Hypothetical or simulated performance results have certain inherent limitations. Unlike an actual performance record, simulated results do not represent actual trading. Also, since the trades have not actually been executed, the results may have under- or over-compensated for the impact, if any, of certain market factors, such as lack of liquidity. Simulated trading programs in general are also subject to the fact that they are designed with the benefit of hindsight. No representation is being made that any account will or is likely to achieve profits or losses similar to those shown.

In doing so, Coleman shall clearly identify those hypothetical or simulated performance results which were based, in whole or in part, on hypothetical results.

44. By virtue of the conduct described in paragraphs 1 through 5 and 10 through 38 above, Defendant has engaged in acts and practices in violation of the Commission's May 1, 2000 Order, and thereby also violated § 6c the Act, 7 U.S.C. § 13a-1.

## **VI. RELIEF REQUESTED**

WHEREFORE, Plaintiff 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, enter:

- a) a permanent injunction prohibiting Coleman from engaging in conduct in violation of Sections 4o(1) and 6c of the Act, 7 U.S.C. §§ 6o(1) and 13a-1 (1994), Commission Regulations 4.16 and 4.41(a) and (b), 17 C.F.R. §§ 4.16 and 4.41(a) and (b), and the Commission's May 1, 2000 Order;
- b) an order directing that Coleman make an accounting to the court of all assets and liabilities, together with all the funds received from persons in connection with the sale of his commodity trading systems, advisory service, and other items sold in connection with these products, including the names, addresses and telephone numbers of any such persons from whom they received such funds, from May 1, 2000 to and including the date of such accounting;
- c) an order directing Coleman to disgorge all benefits received from the acts or practices which constitute violations of the Act or Regulations, as described herein, and interest thereon from the date of such violations;
- d) an order directing Coleman to make full restitution to every client whose funds were lost as a result of acts and practices which constituted violations of the Act and Regulations, described herein, and interest thereon from the date of such violations;
- e) an order directing Coleman to pay a civil monetary penalty in the amount of not more than the higher of \$120,000 or triple the monetary gain to the Defendant for each violation of the Act or Regulations; and
- f) such other and further remedial ancillary relief as the Court may deem appropriate.

Date: September 13, 2001

Respectfully submitted,

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