

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

<p>In the Matter of:</p>)	
)	CFTC Docket No. 02-08
)	
George Angell,)	
)	ORDER INSTITUTING
)	PROCEEDINGS PURSUANT TO
Respondent.)	SECTIONS 6(c) AND 6(d)
)	OF THE COMMODITY
)	EXCHANGE ACT, MAKING
)	FINDINGS AND IMPOSING
)	REMEDIAL SANCTIONS
)	

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that George Angell (“Angell”) has violated Sections and 4o(1)(A) and (B) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 6o (1)(A) and (B) (2001), and Commission Regulations 4.41(a) and 4.41(b)(1)(i), 17 C.F.R. §§ 4.41(a), 4.41(b)(1)(i). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether Angell engaged in the violations set forth herein, and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Angell has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Without admitting or denying the findings of fact in this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”), and prior to any adjudication on the merits, Angell acknowledges service of this Order. Angell consents to the use of the findings in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.¹

¹ Angell does not consent to the use of the Offer or this Order as the sole basis for any other proceeding brought by the Commission other than a proceeding to enforce the terms of this Order, nor does Angell consent to the use of the Offer, or the findings in the Order consented to in the Offer, by any other person or entity in this or any other proceeding. The findings made in the Order are not binding on any other person or entity named as a defendant or respondent in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

From approximately January 1996 through December 1999, Angell and others defrauded clients and prospective clients through material misrepresentations in promotional brochures for the 1995 version of the LSS Day Trading System (“LSS System”). The LSS System, a signal-based, computerized commodity futures trading system, was marketed to the public through several versions of direct-mail promotional brochures which touted, without any basis, the potential for large profits which could be realized by using the LSS System.

Angell and others designed the promotional brochures to mislead potential customers to believe that the LSS System performance record was based on actual trading when, in fact, the results were derived from hypothetical back-testing. The misrepresentation that the reported performance was solely based on actual trading was reinforced throughout the promotional brochures by frequent references to Angell’s purported successful personal day trading using the LSS System. The promotional brochures failed to include a hypothetical trading disclaimer that conformed to Commission Regulation 4.41(b).

Additionally, the promotional brochures falsely represented that the performance results had been independently audited and verified. In fact, the firm that conducted the auditing and testing was not at all “independent.” Rather, the firm was compensated, in part, by Angell on the basis of a percentage of the profits earned from the sale of the LSS System – a material fact that was never disclosed to potential customers.

Finally, an invitation for potential customers to personally review Angell’s personal account statements was never removed from the promotional brochures, even after the publisher knew that Angell no longer had most of the statements to show potential customers.

B. RESPONDENT

George Angell resides at 808 Shavers Lane, Key West, Florida 33040. He is a self-employed systems developer, and seminar lecturer within the options and futures markets. He has not been registered with the Commission in any capacity since 1988.²

C. FACTS

1. Angell’s Promotion of the LSS System

² Angell had been registered in various capacities from approximately 1984 to 1988.

Beginning in late 1995, Angell participated in the creation and dissemination of a series of fourteen page promotional brochures, which promoted the LSS System. The promotional brochures contained three basic misrepresentations. These were the repeated statements that (i) the system's performance summaries and "track record," dating back to January 1987, were based on actual trading by Angell, and not on hypothetical back-testing as was, in fact, the case; (ii) that the system's performance had been audited and verified for accuracy by an independent third-party, which it had not; and (iii) that account statements reflecting actual trading over an eight year period using the LSS System were available in Angell's office for review by prospective LSS System purchasers, which they were not. Approximately 375 individuals each paid \$3,400 for the rights to use the software needed for the LSS System to generate signals recommending trades in nine commodity futures markets.

2. Misrepresentations Concerning the LSS System's Performance, Availability of Account Statements and Independent Verification.

Based on the misleading nature of the promotional brochures, presented in the form of a letter from Angell to investors, many subscribers understood that the performance results set forth therein represented Angell's actual trading, not simulated or hypothetical results. The promotional brochures led readers to conclude that the LSS System had generated \$1,426,830 in actual day trading profits for Angell since 1987. The \$1.4 million was touted as representing "real time performance verified on actual tick-data *since* the system was developed, not (over-optimized) hypothetical past history." In fact, however, this performance claim was based solely on reports generated through back-testing conducted between 1992 and 1997 by a software developer retained by Angell. The profit figure of over \$1.4 million appeared in three places on the cover page preceding the actual letter without any accompanying disclaimer indicating that it was derived from hypothetical back-testing. The cover page also included an invitation by Angell to "duplicate my trading" and under his picture, the representation that the system "ha[d] been successfully traded, both historically and in actual accounts."³

Repeated claims that Angell is an active trader appeared throughout the promotional brochures. For example, the promotional brochures called on subscribers to use the LSS System "as I [Angell] used it to make my profits. So you can duplicate my commodity trading success." Angell's personal trading successes were considerably more modest than that suggested in the promotional brochures and, in fact, were concentrated in only two financial futures markets, not in the nine futures markets included in the performance results. Angell informed prospective subscribers that "LSS is consistent...it's profitable and it's working in the markets right now. Like it's done for me for eight years." In another attempt to add credibility to the promotional brochures, on the thirteenth page, the capitalized bold-type statement, "**PROVEN SUCCESSFUL IN REAL TIME, ACTUAL TRADING,**" appeared as a heading for text that

³ The representation that the \$1.4 million results reflected actual trading was reinforced on the second page of the promotional brochures wherein Angell introduced himself as a "professional futures trader" who made his living "trading the futures markets." Along similar lines, the brochure highlighted that Angell and other traders had made "huge profits" and that "his method ha[d] generated results over \$1,400,000." The two references to the \$1.4 million on this page were not accompanied by either risk disclosure or a cautionary statement explaining the limitations inherent in relying on hypothetical performance results.

included a statement that “[t]his system is proven in the real world.” Four monthly account statements purportedly showing profitable trading by Angell were depicted immediately below the heading and cited text. In fact, most of the performance results reported in the promotional brochures, including the \$1.4 million in trading profits, were based on hypothetical back-testing conducted by Angell’s software developer prior to the introduction of the LSS System to the investing public.

Angell knew that the promotional brochures falsely suggested that performance results were based on his actual trading and failed to take any affirmative steps to prevent this material misrepresentation from being widely disseminated. Similarly, Angell knew the promotional brochures invited customers to review his personal account statements, even after the publisher became aware that Angell did not have most the statements to show potential customers.

Finally, Angell failed to disclose to prospective subscribers that the “independent” firm that had purportedly audited and verified the performance record was not, in fact, “independent.” That firm actually received as compensation 30 percent of the profits from the \$3,400 fee paid by each subscriber for the LSS System. The compensation was for software development and back-testing services. Moreover, no auditing was ever performed.

3. Failure to Include Risk and Hypothetical or Simulated Performance Disclaimers

Angell failed to adequately disclose the simulated nature of his trading claims in the LSS System promotional brochures. Risk and hypothetical performance disclosure statements that were not linked to any specific performance claims appeared in a boxed format on the third and eleventh pages of the promotional brochures. These statements along with other limited references within the body of the brochure, failed to adequately disclose which profit claims were based on hypothetical results. Moreover, any possible effect of the limited fine-print risk and hypothetical performance disclosure statements was vitiated by the overwhelming frequency and prominent misrepresentations regarding trading activity and actual profits.

D. LEGAL DISCUSSION

1. Angell Violated Section 4o(1) of the Act and Commission Regulation 4.41(a)

In order to establish a violation of Section 4o of the Act and Section 4.41 of the Regulations, the Division must prove that an individual through the use of the mails or any means or instrumentality of interstate commerce is (i) a Commodity Trading Advisor (“CTA”) or, with respect to Section 4.41 of the Regulations, a principal thereof, and (ii) either (A) employed any device, scheme, or artifice to defraud any client or prospective client, or (B) engaged in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. Section 4o(1) of the Act prohibits both registered and unregistered CTAs from defrauding their clients. *In re R&W Technical Services, Ltd.*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,582 (CFTC March 16, 1999), *aff’d in relevant part, R&W Technical Services, Ltd. v. Commodity Futures Trading Commission*, 205 F.3d 165, 170 (5th Cir. 2000) (prohibiting fraud by an unregistered CTA who sold trading

systems to the public); *Commodity Trend Service, Inc v. CFTC*, 233 F.3d 981(7th Cir. 2000) (finding that advisors who do not provide personal trading advice and provide only impersonal advice not subject to registration requirements of the Act are nevertheless subject to its fraud provisions). Section 4.41(a) of the Regulations prohibits a CTA or principal thereof from advertising in a fraudulent or misleading manner, regardless of whether those CTAs are required to be registered.

Material misrepresentations and omissions regarding futures and options transactions violate the antifraud proscriptions of the Act. *In re Staryk*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,206 at 45,810 (CFTC Dec. 18, 1997); *Kelley v. Carr*, 442 F. Supp. 346, 351-354 (W.D. Mich. 1977), *aff'd in part and rev'd in part*, 691 F.2d 800 (6th Cir. 1980). A statement is material if it is substantially likely that a reasonable investor would consider the matter important in making an investment decision. *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976); *Sudol v. Shearson Loeb Rhoades, Inc.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,748, at 31,119 (CFTC Sept. 30, 1985). Generally, omissions and misrepresentations of material fact regarding commodity futures and commodity options transactions violate the antifraud provisions of the Act, including omissions and representations concerning the likelihood of profit and other matters that a reasonable investor would consider material to his investment decisions. *See, e.g., CFTC v. Avco Financial Corp.*, 28 F. Supp.2d 104, 115-16 (S.D.N.Y. 1998), *aff'd in part and remanded in part on other grounds sub nom. Vartuli v. CFTC*, 228 F.3d 94 (2d Cir. 2000); *First Nat. Monetary Corp. v. Weinberger*, 819 F.2d 1334, 1340 (6th Cir. 1987); *CFTC v. Crown Colony Commodity Options Ltd.*, 434 F. Supp. 911 (S.D.N.Y. 1977). The same conduct that violates the anti-fraud proscriptions of the Act also violates Section 4o(1) of the Act and Commission Regulation 4.41(a) when such conduct is done by a CTA. *CFTC v. Skorupskas*, 605 F. Supp. 923, 932-933 (E.D. Mich. 1985); *R&W Technical*, ¶ 27,582 at 47,745; *In re Slusser*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 48,315 (CFTC July 19, 1999), *aff'd in part, remanded in part*, 210 F. 3d 783 (7th Cir. 2000).

While Section 4o(1)(A) of the Act and Regulation 4.41(a)(1) require proof of scienter, Section 4o(1)(B) and Regulation 4.41(a) do not. *Commodity Trend Service Inc. v. CFTC*, 223 F.3d at 993. *See also In re Kolter*, [1994- 1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26, 262 at 42,198 (CFTC Nov. 8, 1994) (*citing Messer v. E.F. Hutton & Co.*, 847 F.2d 673, 678-79 (11th Cir. 1988)).

a. Angell was acting as a CTA

Former Section 1(a)(5) of the Act, redesignated as Section 1(a)(6) of the Act under the Commodity Futures Modernization Act, defines a CTA as a person who "for compensation or profit, engages in advising others, either directly or through publications, writings, or electronic media as to the value of or the advisability of trading" in futures or options contracts.

Angell meets the definition of a CTA because, for a fee, he gave trading advice to others concerning trading in futures or options contracts. Angell made these recommendations through a computerized trading system that issued specific buy and sell trading recommendations to LSS System subscribers. *Commodity Trend Service v. CFTC*, [1998-1999 Transfer Binder] Comm.

Fut. L. Rep. (CCH) ¶ 27,777 at 48,705 (N.D. Ill. Sept. 29, 1999), *aff'd*, 233 F.3d 981 (7th Cir. 2000) (corporation regularly issuing commodity related publications which contain specific recommendations for buying and selling commodity futures or options contracts is a CTA). *See also CFTC v. AVCO Financial Corp.* 228 F.3d 94 (2nd Cir. 2000) (finding that AVCO was a CTA when it provided customers with advice on trading Swiss franc futures contracts through computer software).

b. The misrepresentations in the LSS System promotional brochures were fraudulent

Angell engaged in the fraudulent promotion of the LSS System from July of 1997 to December of 1999. The promotional brochures falsely stated that profit figures were based on “real time performance verified on actual tick-data since the system was developed, not over-optimized hypothetical past history.” The promotional brochures failed to disclose that the alleged profits were based on back-testing, and not on his trading results. The false claim about real time trading and the failure to disclose that the results were based on hypothetical trading constituted a violation of Section 4o(1). *See CFTC v. Skorupkas*, 605 F. Supp. 923 at 933 (commodity pool operator’s failure to disclose its performance record does not represent the results of actual trading, but of hypothetical or fictitious trading, constitutes fraudulent conduct in violation of Section 4o(1) of the Act).

Angell knew that the performance results used in the advertising material were based solely on simulated trading, but failed to disclose this material fact. *In re R&W*, [1998-1998 Transfer Binder]¶ 27,582 (CFTC March 16, 1999). Angell also knew that the invitation offered to prospective subscribers to review his personal account statements was fraudulent since he did not retain most of the account statements. Finally, Angell knew that the performance results and track record had not been independently audited or verified. Therefore, Angell violated Section 4o(1)(A) of the Act. *Cf. Hammond v. Smith Barney, Harris Upham & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,659 n.21 (CFTC March 1, 1990) (reckless disregard for the truth sufficient to establish a violation of the anti-fraud provisions of the Act).

Although the LSS System promotional brochures contained some risk and hypothetical performance disclosure statements, the profit misrepresentations in the promotional brochures overwhelmed the disclosure statements in both frequency and prominence. As such, the misrepresentations vitiated any salutary effect of the disclosure statements in the promotional brochure. *Cf. In re R&W*, [1998-1999 Transfer Binder] ¶27,582, at ¶47,740 (“mild cautionary statements are insufficient to undo...false promise[s] of easy profits”); *CFTC v. Commonwealth Financial Group*, 874 F. Supp. 1345, 1352 (S.D. Fla. 1994) (compliance with CFTC risk disclosure regulations did not relieve defendants of liability for fraud).

2. Angell Violated Commission Regulation 4.41(b)(1)(i)

Section 4.41(b)(1)(i) of the Regulations makes it unlawful for a CTA to fail to include the required warnings about the limitations of trading performance numbers based upon hypothetical or simulated data.

Section 4.41(b)(1)(i) of the Regulations provides:

(1) No person may present the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest or a series of transactions in a commodity interest ... unless such performance is accompanied by one of the following: (i) The following statement: ‘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 the profits or losses similar to those shown.’

Angell violated this Regulation by presenting simulated performance results without accompanying those results with the prescribed cautionary statement. Although the promotional brochures provided some disclaimer language regarding hypothetical or simulated results, Angell undermined the effectiveness of the disclaimers by placing them in an unreferenced boxed format at the bottom of the third and eleventh pages of a fourteen (14) page promotional brochures; a different location from the reported simulated results. *See, e.g., Vartuli v CFTC*, 228 F.3d 94, 106-107 (failure to have risk disclosure statement accompany the representations to which disclosure was meant to apply results in violation of Commission Regulation 4.41(b)).

IV.

OFFER OF SETTLEMENT

Angell has submitted an Offer of Settlement in which, without admitting or denying the findings herein, and prior to any adjudication on the merits, he acknowledges service of the Order, admits jurisdiction of the Commission with respect to the matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based upon violations or for enforcement of the Order; waives service of a complaint and notice of hearing, a hearing, all post-hearing procedures, judicial review by any court, any objection to the staff's participation in the Commission's consideration of the Offer, any claim of double jeopardy based on the institution of this proceeding or the entry of any order imposing a civil monetary penalty or other relief, and all claims which he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. Section 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-232, 110 Stat. 862-63, and part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, et seq. (2000), relating to, or arising from, this action; stipulates that the record basis from which this order is entered consists solely of this Order, including the findings in this Order; and consents to the Commission's issuance of this Order, in which the Commission makes findings, including findings that Angell, violated Sections 4q(1)(A) and (B) of the Act and Commission Regulations 4.41(a) and 4.41(b)(1)(i) and orders that he cease and desist from violating the provisions of the Act and Regulations he has been found to have violated; that he pay a civil monetary penalty of fifty thousand dollars (\$50,000) within ten (10) business days of the entry of this Order, and that he comply with his undertakings as set forth below.

V.

FINDING OF VIOLATIONS

Based on the foregoing the Commission finds that Angell violated Sections 40(1)(A) and (B) of the Act, 7 U.S.C. §§ 60(1)(A) and (B), and Commission Regulations 4.41(a) and 4.41(b)(1)(i), 17 C.F.R. §§ 4.41(a) and 4.41(b)(1)(i).

VI.

ORDER

Accordingly, **IT IS HEREBY ORDERED THAT:**

1. Angell shall cease and desist from violating Sections 40(1)(A) and (B) of the Act, as amended, (2001), and Commission Regulations 4.41(a) and 4.41(b)(1)(i).

2. Angell shall pay a civil monetary penalty of fifty thousand dollars (\$50,000) within ten (10) business days of this Order. Angell shall make such payment by electronic funds transfer to the account of the Commission at the United States Treasury or by certified check or bank cashier's check made payable to the Commodity Futures Trading Commission and addressed to Dennese Posey, or her successor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington D.C. 20581, under cover of a letter that identifies Angell and the name and docket number of the proceeding. A copy of the cover letter and the form of payment shall be simultaneously transmitted to Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, N.W., Washington D.C. 20581 and to Charles J. Sgro, Regional Counsel, Division of Enforcement, Commodity Futures Trading Commission, The Newport Office Tower, 525 Washington Boulevard, 21st Floor, Jersey City, New Jersey 07031. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if Angell fails to make payment of his penalty within fifteen (15) days of the due date, he shall be automatically prohibited from trading on or subject to the rules of any registered entity as defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29), until he shows to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date of payment has been made.

3. Angell shall comply with the following undertakings:

A. Registration with the Commission.

Angell shall not, for a period of three years following the date of this Order (i) apply for registration or seek exemption from registration with the Commission in any capacity, and shall not engage in any activity requiring registration or exemption from registration, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.41(a) (9); (ii) act, directly or indirectly, as a principal, officer, director, agent or

employee of any person registered, required to be registered or exempted from registration, unless such exemption is pursuant to Commission Regulation 4.14(a)(9); and (iii) act, directly or indirectly, in a supervisory capacity over any person employed by any person registered, required to be registered or exempted from registration, unless such exemption is pursuant to Commission Regulation 4.14(a)(9).

B. Fraudulent Misrepresentations

1. Angell shall not misrepresent, expressly or by implication:

(a) 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; and

(b) the risks associated with trading pursuant to any commodity futures or options trading system or advisory service;

2. Angell 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, Angell shall clearly identify those hypothetical or simulated performance results that were based, in whole or in part, on hypothetical or simulated trading results;

3. Angell shall not make any representation of financial benefits associated with any commodity futures or options trading system or advisory service without first disclosing, prominently and conspicuously, that futures and options trading involves high risks with the potential for substantial losses;

4. Angell shall not represent, expressly or by implication:

(a) 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;

(b) the risks associated with trading pursuant to any commodity futures or options trading system or advisory service;

(c) that the experience represented by any user, testimonial or endorsement of the commodity futures or options trading system or advisory service represents the typical or ordinary experience of members of the public who use the system or advisory service;

(d) that performance, profits or results have been audited or verified by an independent third party; and

(e) that his personal trading account statements are available for inspection by potential subscribers;

unless: (i) he possesses and relies upon a reasonable basis substantiating the representation at the time it is made; and (ii) for two (2) years after the last date of the dissemination of any such representation, he maintains all advertisements and promotional brochures containing such representation and all materials that were relied upon or that otherwise substantiated such representation at the time it was made, and make such materials immediately available to the Division for inspection and copying upon request; and

C. Public Statements

Angell agrees that neither he nor any of his agents or employees acting under his authority or control shall take any action or make any public statement denying, directly or indirectly, any findings in the Order or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision affects Angell's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Angell will undertake all steps necessary to assure that all of his agents and employees understand and comply with this agreement.

Unless otherwise specified, the provisions of this Order shall be effective on this date. A copy of this Order shall be served on Angell at the addresses set forth in the caption of this Order, on all contract markets, and on the National Futures Association.

By the Commission.

Jean A. Webb
Secretary to the Commodity
Futures Trading Commission

Date: March 6, 2002