

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS**

COMMODITY FUTURES TRADING	)	
COMMISSION,	)	Civil Action No. 3-02CV 0951G
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
DEWEY V. WILES	)	
and	)	
FUTURES EXCHANGE COMPANY,	)	
INC.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AND FOR  
CIVIL PENALTIES UNDER THE COMMODITY EXCHANGE ACT**

**I. SUMMARY**

1. From approximately April 1998 through October 2001, Dewey V. Wiles (“Wiles”), through his company, Futures Exchange Company, Inc. ("FEC"), solicited and accepted more than \$773,000 from approximately 80 persons who invested funds for the purpose of trading commodity futures contracts. Wiles solicited prospective investors by falsely claiming to be a successful commodity futures trader who had a trading system that could predict trades with 90-95% accuracy. Wiles implied that trading futures was safe, and claimed that he could help investors -- particularly senior citizens-- make substantial commodity futures trading profits. Wiles, however, traded only a portion of the customers' funds, and lost money as a result of that trading. Nevertheless, Wiles sent investors numerous written statements falsely reporting that the trading was profitable. Such misrepresentations served both to solicit new money and to keep existing investors from

withdrawing their funds. Meanwhile, Wiles, acting through FEC, misappropriated approximately \$177,000 of investor funds.

2. In collecting the investor funds, Defendants purported to offer joint ventures between themselves and each investor. In so doing, FEC acted as an unregistered Commodity Trading Advisor and Wiles acted as an unregistered Associated Person of a Commodity Trading Advisor, all without any applicable exemption or exclusion from registration.

3. Thus, Defendants have engaged, are engaging, or are about to engage in acts and practices which violate the anti-fraud provisions set forth in Sections 4b(a)(i)-(iii) and 4o(1) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 6b(a)(i)-(iii) and 6o(1)(2001).

4. Further, Defendants have engaged, are engaging, or are about to engage in acts and practices which violate the registration requirements of the Act, set forth in Sections 4m(1) and 4k(3) of the Act, 7 U.S.C. §§ 6m(1) and 6k(3)(2001).

5. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(2001), the Commission brings this action to enjoin such acts and practices, and to compel compliance with the provisions of the Act. In addition, the Commission seeks restitution, disgorgement, civil penalties, and such other equitable relief as the Court may deem necessary and appropriate.

6. Defendants have evidenced a pattern of fraudulent activity, and unless restrained and enjoined by this Court, they are likely to continue to engage in the acts and practices alleged in the Complaint, as more fully described below.

## **II. JURISDICTION AND VENUE**

7. This Court has jurisdiction over the subject matter of this action and all parties hereto pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear 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.

8. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2001), in that the Defendants are found in, inhabit or transact business in this district, and the acts and practices in violation of the Act occurred, are occurring or are about to occur within this district.

### **III. THE PARTIES**

9. Plaintiff Commodity Futures Trading Commission is the independent federal regulatory agency charged with the administration and enforcement of the Act, 7 U.S.C. §§ 1 et seq. (2001), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2001).

10. Defendant Dewey V. Wiles (“Wiles”) currently resides in Garland, Texas 75043. Wiles, who is nearly 80 years, owns Defendant Futures Exchange Company. At all times relevant to the Complaint, Wiles, was found in, inhabited, and transacted business in the Northern District of Texas, including but not limited to: soliciting investors to open discretionary accounts with Futures Exchange Company; executing joint venture agreements with investors as an officer of Futures Exchange Company; maintaining customer funds in a bank account in the name of his wife doing business as Futures Exchange Company; communicating his purported trading results to his investors; and directing trading in accounts at futures commission merchants Alaron Trading, Man Financial, Professional Market Brokerage and LFG, a Division of Refco, Inc. Wiles acted as an unregistered associated person for Futures Exchange Company. Wiles has never been registered in any capacity with the Commission.

11. Defendant Futures Exchange Company Inc. (“FEC”) is a Texas corporation formed or caused to be formed by Wiles in May 1998 and located in Dallas, Texas. FEC acted as a commodity trading advisor for FEC’s customers. Wiles signed agreements as FEC’s President, and

acted as its sole full-time employee. At all times relevant to the Complaint, FEC was found in, inhabited, and transacted business in the Northern District of Texas. FEC has never been registered in any capacity with the Commission.

#### IV. FACTS

##### A. STATUTORY BACKGROUND

12. A commodity trading advisor (“CTA”) is defined in Section 1a(6) of the Act, 7 U.S.C. § 1(a)(6) (2001), as any person, who (i) for compensation or profit, engages in the business of advising others, either directly or through publications, writing or electronic media, as to the value of or the advisability of trading in: (I) 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 execution transaction execution facility; (II) any commodity option authorized under section 4c; or (III) any leverage transaction authorized under section 19; or (ii) for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the activities referred to in clause (i).

13. An associated person (“AP”) is defined in Commission Regulation 1.3(aa)(4), 17 C.F.R. § 1.3(aa)(4) (2001), is a natural person associated with any CTA as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that 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.

## **B. DEFENDANTS' BUSINESS PRACTICES**

### ***Fraudulent Solicitations***

14. From approximately April 1998 through October 2001 (the "relevant period"), Defendant Wiles, acting individually and through FEC, a company he owns, solicited and accepted more than \$773,000 from approximately 80 customers. FEC and Wiles solicited these funds for the purpose of advising investors about the value or advisability of trading commodity futures contracts and trading those contracts on behalf of investors.

15. Defendants' solicitation materials were directed particularly at coaxing senior citizens to trade commodity futures as advised by the Defendants. Defendants represented that their trading was guided by the highly-successful "Futures 2000" computerized system that Wiles supposedly developed in conjunction with an "outsourced" group of experts. Defendants claimed that the system had a "powerful synergistic effect" that could forecast and predict futures trades with "an overall accuracy between 90 – 95%." Defendants' literature represented that the system could be used to trade small customer investments profitably. The literature further represented that commodities trading was an excellent way for senior citizens with meager funds following a catastrophic financial event, or who were facing a "down trend of economic reversal," to "jump-start" their finances and achieve "financial recovery." Wiles sent the solicitation document containing these statements to persons who indicated an interest in trading commodities through him and FEC.

16. Contrary to their representations, Defendants either did not possess, or did not employ on behalf of their investors, a trading system that forecasted or predicted trades with 90 – 95% overall accuracy, as demonstrated by the trading losses sustained by the Defendants trading futures using customer funds.

### ***Misrepresentation and Omissions of Futures Trading Risks***

17. Defendants downplayed and failed to disclose the risks of commodity trading in their solicitation literature, stating "There is nothing to FEAR about trading commodity futures and more money can be made with less capital in a shorter period of time than in any investment vehicle available." (Emphasis in original). They made no other written representations about risk in this solicitation document, none in the joint venture agreement, and none in the false monthly account statements. In fact, trading in commodity futures is highly risky, and is not appropriate for persons with limited means or for those who cannot afford to lose most or all of their investments.

### ***False Guarantees of Profits***

18. Clients who decided to retain the services of Wiles and FEC entered into individual "Joint Venture Agreements" with FEC. Wiles, signing those agreements as President of FEC, promised to invest customer funds in trading various commodity futures contracts. The Joint Venture Agreements Wiles and FEC provided after approximately October 1999 "guaranteed" a return to customers of 100% per annum based on their initial capital investment or 50% of the net profits from the trading of futures contracts, whichever was greater. In fact, Wiles and FEC did not satisfy these guarantees, as they did not produce net trading profits for any customers and the trading resulted in substantial losses of customers' funds.

19. Wiles and FEC entered into agreements containing these guarantees over a period when they knew that they were either sustaining net futures trading losses, or were not trading futures at all.

### *False Written Statements*

20. Wiles and FEC marketed the trading opportunity to each investor as a "joint venture" with FEC that would be advised and managed by FEC and Wiles. Wiles and FEC placed all customer deposits in a single bank account without investors' knowledge.

21. Wiles and/or FEC opened or controlled a total of six trading accounts at brokerage houses registered with the Commission as futures commission merchants, and transferred some of the client funds from FEC's bank account to these brokerage accounts for the purpose of trading futures.

22. Wiles and FEC directed trading for investors that lost over \$42,000 during the period October 1999 through June 2001. Over the entire relevant period, Defendants' futures trading resulted in aggregate losses to investors of more than \$51,000.

23. Rather than reporting the losses to customers of FEC, Wiles caused FEC to issue statements to investors that falsely depicted purchases and sales of futures contracts in specific quantities and prices, and falsely reported trading profits and fictitious net asset values in the investors' accounts. Defendants provided those false and misleading account statements to customers between October 1999 and June 2001, a period in which the aggregate investor trading loss was approximately \$42,000.

24. In fact, contrary to the statements they sent to customers, Defendants traded no futures whatsoever during 14 of the 21 months in which they sent statements to investors touting trading "profits." In the seven months in which Defendants did trade futures with investor funds, they sustained trading losses in five of those months, and made only small profits in the remaining two months. Defendants grossly inflated those small profits in statements they sent to customers.

25. In sum, the account statements and communications Defendants sent to customers misrepresented the actual transactions completed for the FEC investors, the changes in investors' net asset value, and the profits and losses realized by the pool participants.

***Misappropriation of Investor Funds***

26. According to the Joint Venture Agreement, Defendants' only compensation was to derive from the net profits of each customer's futures trading. Defendants only realized net trading profits during four months, for a total profit of approximately \$9,000. Overall, as set forth above, he made no *net* trading profits at all. As a result, Wiles was entitled to withdraw few, if any, of the investor funds in bank or trading accounts as compensation for his efforts in directing the investors' trading.

27. Nevertheless, Wiles withdrew and misappropriated more than \$177,000 of customer funds and used that money to pay his personal and small business expenses, including, among other things, monthly mortgage, utility, and health care costs. Wiles also used the funds to make payments on automobiles, including a BMW, and transferred more than \$13,000 to his wife.

***Acting as an Unregistered Commodity Trading Advisor and Unregistered Associated Person***

28. Between approximately May 1998 and October 2001, FEC acted as an unregistered commodity trading advisor under Section 4m(1), 7 U.S.C. § 6m(1) (2001). FEC did not meet any applicable exemption or exclusion from the CTA registration provisions of the Act or the Commission Regulations.

29. Wiles acted as an associated person of FEC by associating with FEC, a CTA, as a partner, officer, employee, consultant, or agent involving: (i) the solicitation of a client's or prospective client's discretionary account, or (ii) the supervision of any person or persons so engaged. Wiles was associated with FEC in a capacity requiring registration as an associated person, but was not registered as such or exempt from such registration.



V.

**VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND REGULATIONS**

**COUNT I**

**VIOLATIONS OF SECTION 4b(a)(i)-(iii) OF THE ACT:  
FRAUD BY MISAPPROPRIATION, MISREPRESENTATIONS  
AND PROVIDING FALSE STATEMENTS TO INVESTORS**

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

31. Beginning in at least October 1999 and until June 2001, by the conduct outline in paragraphs 10 – 11 and 14 - 29 above, through the use of the mails and other means instrumentalities of interstate commerce, Defendants violated Section 4b(a)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2001), in that they have, directly or indirectly, (i) cheated or defrauded or attempted to cheat or defraud other persons; (ii) willfully entered or caused to be entered for other persons false reports thereof; or (iii) willfully deceived or attempted to deceive other persons.

32. Defendants engaged in this conduct in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were or may be used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped or received in interstate commerce for the fulfillment thereof.

33. By the actions and conduct described in Paragraphs 10 -11 and 14 - 29 above, Wiles and FEC willfully made or caused to be made false reports or statements in connection with orders to make, or the making of any contract of sale of any commodity for future delivery, in violation of Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii) (2001).

34. Wiles undertook all actions described in Paragraphs 10 – 11 and 14 – 29 above in the course of his employment and agency with FEC.

35. By the actions and conduct described in this Count and in Paragraphs 10 – 11 and 14 - 29, above, FEC is liable under Section 4b(a)(i-iii), 7 U.S.C. § 6b(a)(i-iii) (2001), for the foregoing acts and omissions of its agent, Wiles, by operation of Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2 (2001), and Section 1.2 of the Regulations, 17 C.F.R. § 1.2 (2001).

36. Each act and transaction in which Defendants engaged during the relevant period, including specifically those alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(i-iii) of the Act.

## **COUNT II**

### **VIOLATIONS OF SECTION 4b(1) OF THE ACT: FRAUD BY COMMODITY TRADING ADVISOR**

37. Paragraphs 1 through 36 are re-alleged and incorporated herein.

38. Pursuant to Section 1a(6) of the Act, 7 U.S.C. § 1(a)(6) (2001), and as further alleged in Count III below, FEC acted as a commodity trading advisor by engaging in a business, for compensation or profit, of advising others, either directly or through publications, writing 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 execution transaction execution facility, or any commodity option authorized under Section 4c of the Act. Pursuant to Commission Regulation 1.3(aa)(4), 17 C.F.R. §§ 1.3(aa)(4) (2001), and as further alleged in Count III below, during the same period, Wiles, as a natural person and an officer of FEC, acted as an associated person of FEC by soliciting clients' or prospective clients' discretionary accounts.

39. Beginning in at least October 1999 and continuing to June 2001, FEC and Wiles, by use of the mails or other instrumentalities of interstate commerce, directly or indirectly, employed devices, schemes or artifices to defraud customers, or engaged in transactions, practices, or a course of business conduct which operated as a fraud or deceit upon customers, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2001), by the same conduct identified in Paragraphs 10 – 11 and 21 - 26.

40. By the conduct described in Paragraphs 10 – 11 and 20 - 25, above, FEC is liable under Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B), for the foregoing acts and omissions of its agent, Wiles, by operation of Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2, and Section 1.2 of the Commission's Regulations, 17 C.F.R. § 1.2 (2001).

### **COUNT III**

#### **VIOLATION OF SECTION 4m(1) and 4k(3) OF THE ACT:**

##### **Acting as an Unregistered Commodity Trading Advisor; Acting as an Unregistered Associated Person of a Commodity Trading Advisor**

41. Paragraphs 1 through 40 are re-alleged and incorporated herein.

42. Between at least May 1998 through at least October 2001, FEC acted as an unregistered commodity trading advisor in violation of Section 4m(1), 7 U.S.C. § 6m(1) (2001), without meeting any applicable exemption from the CTA registration provisions of the Act or the Commission Regulations.

43. During the same period, Wiles acted as an associated person of FEC by acting as a partner, officer, employee or consultant of FEC, involving the (i) solicitation of a client's or prospective client's discretionary account, or (ii) the supervision of any persons or persons so engaged. Wiles was an officer and associated with FEC in a capacity requiring registration as an

associated person, but was not registered as such or exempt from registration. Commission Regulations 1.3(aa)(4) and (bb), 17 C.F.R. §§ 1.3(aa)(4) and (bb) (2001).

44. Wiles violated Section 4k(3) of the Act, 7 U.S.C. §6k(3)(2001), by being associated with FEC, a CTA, in a capacity requiring registration, without being registered as an associated person or having a valid exemption from such registration.

45. Each act and transaction undertaken as an unregistered CTA or as an unregistered associated person of a CTA, made or taken during the relevant period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1), 7 U.S.C. § 6m(1)(2001) and Section 4k(3) of the Act, 7 U.S.C. § 6k(3)(2001), respectively.

## **VI.**

### **RELIEF REQUESTED**

WHEREFORE, Plaintiff respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1(2001), and pursuant to its own equitable powers, enter:

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

1. Cheating or defrauding or attempting to cheat or defraud other persons, willfully making or causing to be made to other persons false reports or statements thereof or willfully deceiving or attempting to deceive other persons in or in connection with any order to make, or the making of any contract of sale of any commodity for future delivery (including but not limited to foreign currencies), made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (A) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (B) determining the price basis of any transaction in interstate commerce in such commodity, or (C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b of the Act, 7 U.S.C. § 6b (2001);
2. Employing any device, scheme or artifice to defraud any client or participant or prospective client or participant or engaging in any transaction, practice or course

of business that operates as a fraud or deceit upon any client or participant or prospective client or participant commodity pool participants or prospective participants, by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 40(1) of the Act, 7 U.S.C. § 60(1) (2001);

3. Acting as an unregistered CTA by engaging, without Commission registration or an applicable exemption or exclusion from registration, by engaging in the business of advising others (for compensation or profit), either directly or through publications, writings or electronic media, as to the value of or the advisability of trading in: (i) 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 execution transaction execution facility; (ii) any commodity option authorized under section 4c; or any leverage transaction authorized under section 19; or (ii) for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the activities referred to above.
4. Acting as an unregistered associated person of a CTA by associating with a CTA and soliciting a client's or prospective client's discretionary account, or (ii) the supervising persons so engaged, without being registered as an associated person.

B. An Order enjoining defendants from transferring, withdrawing, removing, dissipating, concealing or disposing of any funds, securities, assets or other property, which order shall also restrain, enjoin and be binding upon each firm, corporation, partnership, association, or other person or entity which holds or which is a depository of funds, securities, assets or other property owned or controlled (legally, equitably or otherwise) by or in the name of Wiles or FEC, whether individually or jointly, wherever such funds, assets or other property may be situated; provided, however, that this paragraph shall not prevent any person or entity from taking such steps as are necessary as to enable Wiles or FEC to comply with this Order, and further provided, that any futures or options trading account owned or controlled by Wiles or FEC in which there are open futures or options positions, shall be traded by the Defendants, or any other person who owns or controls the account, for liquidation only in a prudent manner and with the purpose of preserving the value of the account; and

C. An Order enjoining defendants from destroying, mutilating, concealing, altering, or disposing of any of the books, records, documents, correspondence, brochures, manuals, electronically stored data, tape recordings, or other property of Defendants, wherever such materials may be situated, relating or referring to commodity interest transactions, FEC and Wiles, banking records, records relating to any assets, investments, securities or other property owned or controlled by Wiles and FEC or any of the customers of those entities;

D. An Order directing defendants:

1. To cooperate fully with the Commission to locate all assets, books and records of Wiles and FEC, wherever such assets, books, records, may be situated;
2. To make an accounting of all assets and liabilities of Wiles and FEC.

E. An order requiring defendants to disgorge all benefits received from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest;

F. An order requiring defendants to make restitution to every customer whose funds were received or utilized by them as a result of acts and practices which constituted violations of the Act, as described herein, including pre-judgment interest;

G. An order requiring defendants to pay civil penalties under the Act, in an amount not to exceed the higher of \$110,000 (or \$120,000 for violations occurring after October 23, 2000) or triple the monetary gain for each violation of the Act, as described herein; and

H. Such other remedial ancillary relief as the Court may deem necessary and appropriate.

Respectfully submitted,

Date: May 6, 2002

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