

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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OFFICE OF ADMINISTRATIVE
PROCEDURE
COMMODITY FUTURES TRADING
COMMISSION

In the Matter of

CFTC Docket No. 04-04

GEORGE R. HARRISON,

**ORDER INSTITUTING PROCEEDINGS
PURSUANT TO SECTIONS 6(c) AND 6(d) OF
THE COMMODITY EXCHANGE ACT AND
MAKING FINDINGS AND IMPOSING
REMEDIAL SANCTIONS AS TO RESPONDENT
GEORGE R. HARRISON**

Respondent.

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that George R. Harrison ("Harrison") has violated Section 4o(1)(A) and (B) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 6o(1)(A) and (B), and Sections 4.41(a)(1) and (2), 4.41(b)(1) and (2) of the Regulations promulgated under the Act ("Regulations"), 17 C.F.R. §§ 4.41(a)(1) and (2), 4.41(b)(1) and (2). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether Harrison engaged in the violations set forth herein, and to determine whether an order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of these administrative proceedings, Harrison has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Harrison acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Act and Making Findings and Imposing Remedial Sanctions ("Order"). Harrison, without admitting or denying the findings of fact or conclusions of law herein, consents to the use of the findings contained 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 Harrison does not consent to the use of the Offer or this Order, or the findings consented to in the Offer, as the sole basis for any other proceeding brought by the Commission other than a proceeding brought to enforce the terms of this Order. Nor does he consent to the use of the Offer or this Order, or the findings consented to in the Offer, in any other proceeding. The findings made in this Order are not binding on any other person or entity named as a defendant or respondent in this or any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

From November 2000 through July 2003 (the “relevant time period”), Harrison fraudulently solicited clients and prospective clients through his website, located at www.grharrison.com, and e-mailed newsletters, to purchase his commodity futures trading system called the MBP Trading Method (“MBP Method”). In his marketing, Harrison created the false impression that he was trading commodity futures contracts successfully using his MBP Method. Harrison provided examples of profitable trading, identifying some as hypothetical while listing a series of others without identifying that they were hypothetical. As a result, it appeared that the series of profitable trades were actual trades he had made using his MBP Method, when they were not.

In promoting the MBP, Harrison also downplayed the risk of loss associated with futures trading by touting the high rate of purportedly successful trading achieved by using his trading method without otherwise disclosing the risks of futures trading. Further, Harrison failed to provide the disclosure concerning the inherent limitations of hypothetical trading and, when he did provide such a disclaimer, he failed to place it in close proximity to his claimed results, as required by the Commission’s Regulations.

By making such material misrepresentations about his trading, Harrison violated Section 40(1)(A) and (B) of the Act and Section 4.41(a)(1) and (2) of the Commission’s Regulations. Harrison’s failure to provide the required disclosure concerning hypothetical trades violated Section 4.41(b)(1) and (2) of the Regulations.

B. SETTLING RESPONDENT

George R. Harrison resides in Claremont, New Hampshire. Harrison was registered with the Commission as the principal of a commodity-trading advisor (“CTA”) from September 1986 to April 1993. Since 1993, Harrison has not been registered with the Commission in any capacity.

C. FACTS

Between November 2000 and July 2003, Harrison used the Internet, specifically his website located at www.grharrison.com, to offer his commodity futures trading system to clients on the World Wide Web. Harrison operated the [grharrison.com](http://www.grharrison.com) website and was solely responsible for the website’s content. On his website and through e-mailed newsletters, Harrison misled clients and prospective clients by falsely implying that he used his MBP Method to profitably trade commodity futures contracts. At the same time, Harrison minimized the risk of loss associated with futures trading by falsely touting the high degree of successful trading using the MBP Method.

Harrison created the false impression that he was using his MBP Method to profitably trade commodity futures contracts in several ways. On his website, Harrison provided examples of profitable trades, identifying only some of those trades as hypothetical and thus, implying that the other examples of trades were, in fact, actual trades that achieved profits through the use of the MBP Method. For example, Harrison's website proclaimed that the "'MBP' Method created a rate of return of over 864% for targeted trades and 1,448% on trending daytrades over a 52 week period and *has averaged over 15% PER WEEK* on targeted trades and *over 27% PER WEEK* on trending intra-day trades . . ." (emphasis in original). His website also contained the claim that "Using our Method, our May & June 2002 recommendations alone had us go Short the US Dollar (twice!) for gains over 572% . . . All with limited risk. And we're still counting!" (emphasis in original). Harrison also provided clients with his "Daily Performance Record" which indicated that his "targeted trades" between December 30, 2001 and May 16, 2003 returned profits of \$251,875, while "trend trades" made profits of \$392,275 during the same time period. While Harrison's website contained disclaimers, he failed to disclose that the profitable trades listed above, and others, were hypothetical. Disclaimers on the website were typically several pages away from any purported claims or were visible only after accessing a separate page.

Harrison also minimized the significant risks of trading commodity futures contracts by emphasizing the purported high degree of trading success and with statements such as "you can plainly see from our track record, we average many more Winners than losers!" Harrison also claimed "50% and 100% can be expected from most of our recommendations." Again, Harrison did not sufficiently disclose that the trading was hypothetical and did not balance such glowing affirmative representations with information regarding the significant risks of trading commodity futures contracts.

IV.

LEGAL DISCUSSION

A. Harrison Committed Solicitation Fraud In Violation of Section 4o(1)(A) and (B) of the Act and Regulation 4.41(a)(1) and (2)

Harrison, while acting as a CTA, violated Sections 4o(1)(A) and (B)² of the Act and Regulations 4.41(a)(1) and (2),³ by falsely representing to clients and prospective clients that he

² Section 4o(1) of the Act provides, in pertinent part:

It shall be 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 prospective client . . .; 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.

³ Commission Regulation 4.41(a) provides, in pertinent part:

No . . . commodity trading advisor, or any principal thereof, may advertise in a manner which (1) [e]mploys any device, scheme or artifice to defraud any . . . client or prospective client; or (2)

was using his MBP Method to make profitable futures contracts trades. Harrison also violated these provisions by representing hypothetical trades as actual trades and by misrepresenting the risks associated with his trading method.

To violate Section 4o(1) of the Act, Harrison must have acted as a CTA. Pursuant to Section 1a(6) of the Act, a CTA is a person who advises another about the value or advisability of trading in futures contracts, either directly or through publications, writings or electronic media, for compensation or profit. Commodity trading advice includes the sale of trading systems that generate specific trade recommendations. *CFTC v. Avco Fin. Corp.*, 28 F. Supp. 2d 104, 118-119 (S.D.N.Y. 1998), *aff'd in relevant part, rev'd and remanded in part sub nom., CFTC v. Vartuli*, No. 98-6280 (2d Cir. September 22, 2000) (company acted as a CTA under “the plain language of the [Act]” when it marketed computer software that generated specific recommendations to buy and sell futures contracts); *In re R&W Services, Ltd.* [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,582 at 47,738 (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) (trading signals generated by computerized trading system, together with advertisements which convince clients that the signals will be highly profitable, constitute advising others). Harrison acted as a CTA because through his business of selling his commodity futures trading method, he advised others on commodity futures trading.

Sections 4o(1)(A) and (B) of the Act prohibit both misrepresentations and omissions regarding futures and options transactions. *R&W Technical Services, Ltd. v. CFTC*, 205 F.3d 165, 170 (5th Cir. 2000) (prohibiting fraud by an unregistered CTA who sold trading methods to the public). Similarly, Commission Regulations 4.41(a)(1) and (2) prohibit a CTA from advertising in a misleading manner.

Generally, omissions and misrepresentations of material fact regarding commodity futures and commodity options transactions violate the antifraud provisions of the Act. *See, e.g., In re Staryk*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,206 at 45,810 (CFTC Dec. 18, 1997); *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); *Kelley v. Carr*, 442 F. Supp. 346, 351-54 (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).

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)

[i]nvolves any transaction, practice or course of business which operates as a fraud or deceit upon any . . . client or any prospective . . . client.

¶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)).

Harrison violated both Sections 4o(1)(A) and (B) of the Act and Regulations 4.41(a)(1) and (2) by implicitly representing in his ads that he profitably traded commodity futures contracts using his MBP Method when, in fact, he did not engage in any commodity futures trading. See *CFTC v. Commonwealth Financial Group, Inc.*, 874 F. Supp. 1345, 1353-54 (S.D. Fla. 1994), citing, *inter alia*, *Reed v. Sage Group*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,942 at 34,299 (CFTC Oct. 14, 1987) (misrepresentations regarding a firm or broker's trading record and experience are fraudulent because past success and experience are material facts to reasonable investors); *In re R & W Technical Services, Ltd.*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,582 at 47,742 (CFTC Mar. 16, 1999), *aff'd in relevant part*, *R&W Technical Svcs., Inc. v. CFTC*, 2000 WL 217498 (5th Cir. Feb. 24, 2000) ("The use of a trading method by its developers is important to reasonable consumers because it reflects a meaningful vote of self-confidence and a sign of authenticity"). A reasonable customer would think it material that the MBP Trading System had never been tested through actual trading. *Levine v. Refco, Inc.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,488 at 36,115 (CFTC July 11, 1989); see also *CFTC v. Skorupskas*, 605 F. Supp. 923, 933 (E.D. Mich. 1985) (misrepresenting performance tables as being actual trading results violated Section 4o of the Act).

Harrison also violated Section 4o(1)(A) and (B) and Regulations 4.41(a)(1) and (2) by misrepresenting hypothetical trades as actual profitable trades made by following the MBP Method. *R&W Technical Svcs., Inc. v. CFTC*, 205 F.3d 165, 170 (5th Cir. Feb. 24, 2000) ("Because simulated results inherently overstate the reliability and validity of an investment method, and because extravagant claims understate the inherent risks in commodities trading, a reasonable investor would find [such] fraudulent misrepresentations to be material."). See also *CFTC v. Skorupska*, 605 F. Supp. 923, 933 (E.D. Mich. 1985) (misrepresenting performance tables as being actual trading results violates anti-fraud provisions of the Act).

Harrison further violated both Section 4o(1)(A) and (B) and Regulation 4.41(a)(1) and (2) by claiming that his method produced a high degree of success, thus allowing for trading with much less risk without otherwise balancing such extravagant claims with appropriate disclosures of the risks involved in trading futures contracts. It is well established that claims of minimal risk in options and futures trading are false as a matter of law even when presented with risk disclosure. *Keller v. First Nat'l Monetary Corp.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22, 402 at 29,823 (CFTC Oct. 22, 1984) ("statements that lead investors to believe that a particular investment is risk free and will almost certainly yield a profit are not protected from claims of fraud simply because the broker has made pro forma disclosure of risk"). Harrison's repetitive claims of trading successes, high profits and minimal risks overshadowed the random disclosures scattered around his website.

While violations of Section 4o(1)(B) and Regulation 4.41(a)(2) do not require scienter, in order to establish a violation of Section 4o(1)(A) of the Act and Regulation 4.41(a)(1) it must be shown that Harrison acted with scienter. Harrison violated Section 4o(1)(A) of the Act and

Regulation 4.41(a)(1), with scienter because he knew that he had not earned any profits from actual futures trading using his system, but advertised that the system was used to place profitable trades. Harrison also knew that there was no reasonable basis to claim the MBP Method could be traded with less risk.

B. Harrison Failed To Provide Required Hypothetical Disclaimer In Violation of Regulations 4.41(b)(1) and (2)

Pursuant to Section 4.41(b)(1)(i) and (ii) of the Regulations, no person may present commodity interest trading performance results based upon hypothetical or simulated data, unless such performance results are 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 profits or losses similar to those shown.” or
- (ii) A statement prescribed pursuant to rules promulgated by a registered futures association pursuant to section 17(j) of the Act.

Section 4.41(b)(2) requires that:

If the presentation of such simulated or hypothetical performance is other than oral, the prescribed statement must be prominently disclosed.

As previously stated, the disclaimers on the website were typically several pages away from any purported claims or were visible only after accessing a separate page. As a result, Harrison violated Regulations 4.41(b)(1) and (2) by presenting simulated performance results in his web pages and failing to accompany those results with a prominently disclosed prescribed cautionary statement in close proximity.

V.

OFFER OF SETTLEMENT

Harrison has submitted an Offer of Settlement in which he, subject to the foregoing, acknowledges service and receipt of this Order; admits the jurisdiction of the Commission with respect to the matters set forth in the Complaint and Order; waives the filing of a complaint and notice of a 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 upon the institution of this proceeding or the entry in this proceeding of

any order imposing a civil monetary penalty or any other relief, and all claims which he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63, and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, et seq. relating to, or arising from this action.

Harrison stipulates that the record basis on which this Order is entered consists solely of the Order and the findings consented to in the Offer which are incorporated in this Order. Harrison consents to the Commission's issuance of this Order, which makes findings, as set forth above, and orders that Harrison cease and desist from violating the provisions of the Act and Regulations he has been found to have violated; Harrison pay a civil monetary penalty of \$18,000; and Harrison comply with his undertakings as set forth in his Offer and incorporated in this Order.

VI.

FINDING OF VIOLATIONS

Solely on the basis of Harrison's consent, as evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that Harrison violated Sections 40(1)(A) and (B) of the Act, 7 U.S.C. §§ 60(1)(A) and (B) and Section 4.41(a)(1) and (2), 4.41(b)(1) and (2) of the Commission's Regulations, 17 C.F.R. §§ 4.41 (a)(1) and (2), 4.41(b)(1) and (2).

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

1. Harrison shall cease and desist from violating Section 40(1)(A) and (B) of the Act, 7 U.S.C. §§ 60(1)(A) and (B) (2001) and Sections 4.41(a)(1) and (2), 4.41(b)(1) and (2) of the Commission's Regulations, 17 C.F.R. §§ 4.41(a)(1) and (2), 4.41(b)(1) and (2) (2003);
2. Harrison shall pay a civil monetary penalty in the amount of eighteen thousand dollars (\$18,000);⁴
3. Harrison shall comply with the following undertakings as set forth in his Offer:
 - A. Harrison shall not misrepresent, expressly or by implication:

⁴ Harrison shall pay the total amount within ten days (10) of the date of the Order by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of letter that display Harrison's name and the docket number of the proceeding. Harrison shall simultaneously transmit a copy of his cover letter and the form of payment to Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581.

1. 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 method, method or advisory service; and
 2. the risks associated with trading pursuant to any commodity futures or options trading method, method or advisory service.
- B. Harrison shall not present the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest account or series of transactions in a commodity interest account 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, Harrison shall clearly identify those hypothetical or simulated performance results which were based, in whole or in part, on hypothetical trading results.

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

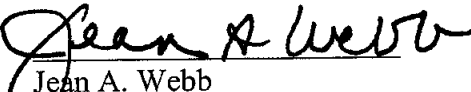
- D. Harrison shall not represent, expressly or by implication:
1. the performance, profits or results achieved by, or the results that can be achieved by users, including himself, of any commodity futures or options trading method, method or advisory service;
 2. the risks associated with trading using any commodity futures or options trading method, method or advisory service;
 3. the performance, profits, results achieved by any user, or represented in any testimonial or endorsement of the commodity futures or options trading method, method or advisory service represents the typical or ordinary experience of members of the public who use the method, method or advisory service;

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

- E. Public Statements. By neither admitting nor denying the findings of fact or conclusions of law, Harrison agrees that neither he nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions 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 shall affect Harrison's (1) testimonial obligations, or (2) right to take legal positions in other proceedings to which the Commission is not a party. Harrison will undertake all steps necessary to assure that all of his agents and employees under his authority and control understand and comply with this agreement.

Unless otherwise specified, the provisions of this Order shall be effective on this date.

By the Commission.


Jean A. Webb
Secretary to the Commodity
Futures Trading Commission

Date: November 18, 2003