UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of	:	
	:	
Norman Eisler	:	**CFTC Docket No. 01-14**
	:	
-and-	:	**Administrative Law Judge**
	:	**Bruce C. Levine**
First West Trading, Inc.	:	
	:	
Respondents.	:	
	:	

I.

ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS

A Complaint and Notice of Hearing against Norman Eisler ("Eisler") and First West Trading, Inc. ("First West") (collectively "Respondents") was issued by the Commodity Futures Trading Commission ("Commission") on July 11, 2001. The Complaint alleged that Respondents violated Sections, 6(c), 6(d) and 9(a)(4) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 9, 15, 13(a) and 13b (1994), and Section 33.9 of the Commission Regulations ("Regulations"), 17 C.F.R. § 33.9 (2001). To resolve this matter, Respondents have submitted a Joint Offer of Settlement ("Offer") that the Commission has determined to accept.

II.

Respondents acknowledge service of this Order Making Findings and Imposing Remedial Sanctions ("Order"). Without admitting or denying any of the findings contained in the Order, and prior to any adjudication on the merits, Respondents consent to the entry of this Order and to the use of the findings in this Order only in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.[1]

[1] However, Respondents do not consent to the use of their Offer, this Order or these findings: (1) as the sole basis for any other proceeding brought by the Commission, other than a proceeding brought to enforce the terms of this offer; or (2) in any proceeding to which the Commission is not a party. The findings made in this Order are not binding on any other person or entity named as a defendant or respondent in any other proceeding nor are they binding on Respondents in any other proceeding to which the Commission is not a party.

A. RESPONDENTS

Norman Eisler, who resides at 4 Pine Brook Drive, White Plains, New York 10605, has been registered with the Commission as a floor broker since April 1993. He was the Chairman and a member of the NYFE at all relevant times hereto. On or about May 15, 2000, Eisler resigned his chairmanship and membership on the NYFE.

First West Trading, Inc. is a New York corporation owned jointly by Eisler and his wife. Its principal place of business was located at 4 Pine Brook Drive, White Plains, New York 10605. First West has never been registered with the Commission.

B. SUMMARY

Eisler, while trading for his company, First West, from at least August 1, 1999 through May 12, 2000 set settlement prices of options on the PSE Technology Index ("P-Tech") futures contract. Eisler's calculation of settlement prices inflated the value of the First West account by, on average, in excess of $2 million each day. By this activity, the Commission finds that Eisler and First West manipulated the settlement prices of the P-Tech options contract, which allowed First West to avoid or dramatically reduce margin calls against its account.

C. FACTS

1. New York Futures Exchange

a. The P-Tech Market

P-Tech futures and P-Tech options contracts were traded on the New York Futures Exchange ("NYFE") from 1996 until 2001. The P-Tech market was a composite of approximately 100 technology-based stocks developed by the Pacific Stock Exchange. P-Tech options contracts were available for hundreds of different strike prices for the spot month and each of the back months.

b. The P-Tech Options Settlement Committee

NYFE used a Settlement Committee ("Committee") to settle the P-Tech market as well as other markets. The Committee is comprised of NYFE members who are active in the P-Tech or other NYFE markets. Eisler, along with two other traders, were key members of the Committee. Eisler primarily settled the P-Tech Options market while the other members, either in combination or separately, settled the other NYFE markets. On the rare occasions when Eisler was not present, one of the other members of the Committee settled the P-Tech market.

c. Options Settlement Prices

Settlement prices are used to calculate the variation payment – the gain or loss – for each position open at the end of the day. For positions held since the previous trading day, the variation payment is the difference between the settlement price that day and the settlement price on the previous day. For positions acquired during the day and held at the end of the day, the variation payment is the difference between the trade price and the settlement price. Clearinghouses pay (or collect) variation payments to (or from) their members for the members' daily variation. Similarly, futures commission merchants ("FCMs") use the settlement prices to determine each customer's gains (or losses) during the day, which will increase (or decrease) the customer's account equity, and thereby decrease (or increase) the account's margin requirements. Settlement prices are disseminated by exchanges to members of the public, including FCMs and news outlets.

Setting a settlement price of a particular option contract at an artificial level above its "fair value" has a substantial impact on a trader's position. For traders who are long the market in a particular month, their account balance is valued at an artificially high level and gives the misleading appearance that their accounts earned money. For traders who are short the market for a particular month, their account is valued at too low a level and gives the misleading appearance that their accounts lost money. This apparent "loss" may trigger a margin call in which the trader is required to deposit additional margin money. If the account holder is unable to post the additional margin, one or more positions in the account will likely be liquidated— unfairly if the settlement price is artificial. As a matter of market integrity, therefore, it is important that the settlement price be set equal to the fair value at the close of trading so that neither the long nor the short is disadvantaged in any meaningful way.

From August 1999 through May 12, 2000, NYFE option contract settlement prices were generally calculated by inputting certain data into a New York Board of Trade ("NYBOT") computer system maintained on the floor of the NYFE[2]. A NYBOT employee was responsible for entering the data into the system and checking the accuracy of the results. Five separate variables were needed to perform the calculation: (1) the settlement price for the underlying future; (2) the settlement price for other selected options; (3) the "spread," which was the difference in price between months; (4) the interest rate; and (5) the number of days to expiration of the option.

Interest rates, days to expiration and the "spread" were values that the computer determined on a daily basis without the need of external input. The futures settlement price was provided on a daily basis by either a Committee member or otherwise obtained by the NYBOT employee who entered the data into the computer. The last element, settlement prices for selected options, was derived by Committee members.

[2] NYFE is a wholly owned subsidiary of the New York Cotton Exchange ("NYCE"). NYBOT is a holding company for NYCE.

To understand settlement prices requires an understanding of the relationship between price and volatility.[3] Every settlement price reflects a certain volatility. Conversely, every volatility results in a certain settlement price. Therefore, to enter new daily settlement prices is to change the level of volatility. Moreover, to change or maintain volatility levels is to change or maintain settlement prices. By deriving settlement prices for selected options, an "implied" volatility curve can be calculated and, in turn, be used to calculate settlement prices of other options.

2. Eisler's Manipulation of P-Tech Option Settlement Prices

a. Eisler's Settlement of the P-Tech Options Market

Eisler did not use the settlement procedures utilized in other NYFE markets.[4] Rather, Eisler periodically set volatility levels for P-Tech options. From time to time, as the market changed, Eisler readjusted volatility levels so as to benefit First West's trading account. On a daily basis, Eisler provided the settlement clerk with only the futures settlement price for that day. By doing this, Eisler controlled the level of volatility, and thereby settlement prices. If Eisler was not available to settle the P-Tech options contracts, another settlement committee member would establish settlement prices according to instructions left by Eisler, or by using the procedures followed by Eisler.

b. The P-Tech Options Settlement Prices Were Artificial

An analysis of P-Tech options settlement prices revealed that settlement prices were artificial. The analysis reflected two significant findings. First, the volatilities implied in the settlement prices of P-Tech options purchased in different months on the same underlying futures contract were frequently significantly out of alignment with each other. It was not uncommon for the options to have volatilities that deviated from each other by as much as 20% and sometimes as high as 50% or more. Second, the P-Tech Option settlement-price volatilities were also out of alignment with both historical volatilities for the P-Tech futures contract and the closing trade-price volatilities from options on two other technology-based stock indices. There was no rational market-based explanation for differences of these magnitudes, and the biases found reflect that

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3 Volatility is a measure of variability, usually of prices, and a major factor influencing the price of an option. The standard deviation of a price series is commonly used to measure price volatility.

4 Other markets provide examples of how the NYFE settlement process customarily works. The Russell 1000 Index ("Russell") and New York Stock Exchange Composite Index ("YX") had hundreds of strike prices in the spot and back months. At the close of the trading day, Russell and YX settlement committee members would obtain from one of the market makers a series of bid-ask spreads for the at the money put and call as well as 10 to 15 in the money puts and calls and 10 to 15 out of the money puts and calls for both the spot and each of the back months. From these bid-ask spreads, and based on his experience and prevailing market conditions, a Committee member would make a determination of the settlement price for the at the money put and call and the 20 to 30 other puts and calls. Then, using the 20 to 30 option settlement prices, the futures settlement price and the data for the other variables, the computer program calculated the implied volatility curve for the options prices. Based on this curve, the computer determined the settlement prices for the remaining hundreds of other option strike prices in the spot and back months.

the settlement prices of the P-Tech option contract, during the period analyzed, were artificial.

The consequences of the artificiality of the volatility of the P-Tech options are significant. Artificially increasing the volatility rate will cause settlement prices of option contracts to be artificially high and will, therefore, overstate the actual value of long option positions. Similarly, artificially reducing the volatility in determining settlement prices of option contracts will artificially understate the level of exposure of short option positions.

The artificiality of the prices set by Eisler for the P-Tech market was apparent on at least one occasion when Eisler did not settle the market. On Friday August 27, 1999 Eisler settled the market and, as a result of his settlement prices, First West's account had a margin excess of $828,698.48. On Monday August 30, 1999, Eisler was on vacation and unavailable to settle the market. On that day, several local traders as well as one of the market makers approached a Committee member to have him settle the market in a manner other than that used by Eisler. As a result of the August 30 settlement prices, First West's account had a margin deficit of $3,033,958.52.

On August 31, Eisler received a telephone call from his FCM advising him that First West had a margin call. On the same day, Eisler spoke to one or more settlement committee members and settlement prices for Tuesday August 31 were fixed according to Eisler's instructions, namely, settlement prices (and volatility levels) were readjusted to the level set prior to August 30, 1999. Eisler did not liquidate any of his positions, purchase additional positions, nor did the market make any substantial moves from August 30 to August 31. Nevertheless, First West's account returned to a margin excess position of $216,986.48.

c. Eisler Intended to Cause the Artificial Prices and Benefited From the Artificial Prices

During the period from August 1999 through May 12, 2000, Eisler was the largest trader of the P-Tech Options contracts (other than market makers). Eisler purchased and sold these options for the account of First West.

From at least August 1, 1999 through May 12, 2000, Eisler settled the P-Tech options market with the intent and purpose of causing the settlement prices of the P-Tech options contracts to be artificial. The settlement prices did not reflect the legitimate forces of the marketplace; rather, those artificial settlement prices benefited the open positions in the First West trading account.

As a result of the manipulated settlement prices, the value of the First West trading account was overstated and the margin requirements were accordingly reduced significantly. On a typical day between August 2, 1999 and May 12, 2000, the value of First West's account was overstated by over $2 million. By May 15, 2000, the value was overstated by as much as $5 million or more.

d. Events in April-May 2000 Caused the End of the Manipulation

Beginning in April and continuing into May 2000, the P-Tech market became at once both more volatile and less liquid. This combination made it more difficult for Eisler to maintain First West's positions and to manipulate the market. In prior months, Eisler was able to roll out of the positions prior to expiration, thus extending his ability to maintain the manipulation. As each nearby option expired, new positions in later option maturities were entered. During the period August 1999 through December 1999, P-Tech's historical volatility return more than doubled.

In April 2000, First West was faced with the impending exercise of a substantial number of April 2000 puts which Eisler had granted and which, due to the fall in value of the P-Tech index, were significantly in the money. Going into expiration, the actual gains or losses on the expiring option positions had to be realized, in contrast to the paper gains that had been generated by Eisler prior to expiration by manipulating settlement prices. When the losses from the exercise of the April 2000 puts against First West were realized by it, the only way to cover First West's losses was to escalate the paper gains (i.e., the manipulation) in the May and June contracts that remained open.

Despite Eisler's efforts to manipulate, on May 8, 2000, First West was issued a margin call in the amount of $488,190.09. First West avoided having to infuse cash by writing options and changing its position in the futures contracts. On May 10, 2000, First West again received a margin call, this time in the amount of $728,786.60. First West failed to meet this margin call. On May 11, 2000, First West's margin call increased to $1,329,057.23. On May 12, 2000, First West's margin call increased to $1,670,217.23. On May 15, 2000 Eisler did not settle the P-Tech Options contracts. Another settlement committee member set the settlement prices in the same manner used in the YX and the Russell Options contracts, by determining an implied volatility curve based on bids and offers. The newly determined settlement prices of the P-Tech Options contracts caused the First West account to be in a margin deficit of $6,566,610.33 and the account value to drop to a negative $4,923,169.33. First West was unable to meet the margin calls and its positions were liquidated.

IV. LEGAL DISCUSSION

A. Respondents Eisler and First West Violated Section 6(c), 6(d)and 9(a)(4) of the Act and Commission Regulation 33.9(d)

In cases involving congested markets, *i.e.*, squeezes or corners, the following factors must be established in order to prove manipulation:

1. that the accused had the ability to influence market prices;
2. that they specifically intended to do so;
3. that artificial prices existed; and
4. that the accused caused the artificial prices.

In re Cox, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23, 786 at 34,061 (CFTC July 15, 1987). While factually different from the Commission's cases on squeezes and corners, the evidence in this case satisfies each factor of manipulation.

1. Eisler And First West Had The Ability To Influence Prices

Typically, in analyzing whether the accused had the ability to influence prices, the courts have examined whether the accused has established dominant or near dominant control in the cash and futures markets, or some combination of both. *See, e.g.*, In re Indiana Farm Bureau Cooperative Association, (1982-1984 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 21,796 at 27,285 (CFTC Dec. 17, 1982); Cargill v. Hardin, 452 F.2d 1154, 1172 (8th Cir. 1971), *cert. denied*, 406 U.S. 932 (1972); Great Western Food Distributors v. Brannan, 201 F.2d 476, 478 (7th Cir.), *cert. denied,* 345 U.S. 997 (1953). Here, as the primary, and typically only, settler of the P-Tech Options market, Eisler had the unique ability to control the settlement price. He was the only one who determined the prices and caused them to be entered into the computers for eventual dissemination to clearinghouses, futures commission merchants and other public sources. There was no internal check by either the Committee, NYFE or NYBOT[5] to monitor what Eisler was doing. His ability to influence the market prices was unfettered.

2. Eisler And First West Specifically Intended to Influence Market Prices

The Commission has long recognized that the intent to create an artificial price or distorted price is the sine qua non of manipulation. Indiana Farm, ¶21,796 at 27,282. In the words of the Fifth Circuit, "there must be a purpose to create prices not responsive to the forces of supply and demand; the conduct must be calculated to produce a price distortion." Volkart Brothers, Inc. v. Freeman, 311 F.2d. 52, 58 (5th Cir. 1962). Manipulation is, at the bottom, "the creation of an artificial price by planned action, whether by one man or a group of men." General Foods Corp. v. Brannan, 170 F.2d 220, 231 (7th Cir. 1948), cited with approval in Indiana Farm, ¶21,796 at 27,281.

Commission law, as established by the Commodity Exchange Authority, the Commission's predecessor agency, previously addressed the issue of settlement price manipulation in In re Henner, 30 A.D. 1151 (1971). A Judicial Officer ("JO") found that the Respondent had manipulated November 1968 shell egg futures prices on the Chicago Mercantile Exchange by his purchases at the close of trading on June 25, 1968. The JO concluded that the price was artificial primarily because Henner "paid more than he had to ... for the purpose of causing the closing price to be at that high level." *Id.* at 1194. Additionally, he noted a distortion in spread prices between the contract that was being manipulated and other further out contracts where a distortion would not typically be seen. *Id.* at 1172-74. He found no other factors besides Henner's bidding that could account for the unusual and unsustained price rise and held that Henner's unusual and

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[5] On July 11, 2001, the Commission issued an Order by consent against NYFE holding that NYFE failed to enforce its own rule for determining settlement prices. In the Matter of New York Futures Exchange. CFTC Order No. 01-13

unnecessarily high last bid demonstrated Henner's clear intent to create an artificial price, which, if sustained, would have benefited his previously established long position. *Id.* 1157-75.

The practical effect of Eisler's manipulation of settlement prices was to overstate First West's account margin by a daily value of approximately $2 million. It is clear in this case that Eisler and First West intended to create artificial prices and thereby manipulate the market. Moreover, the artificial prices favored First West's position whether they were net long or net short. Eisler's conduct and the artificial prices, which occurred over at least a nine and one-half month period, were clearly intentional and not coincidental.

3. Artificial Prices Existed

Proof of a successful manipulation requires a showing that prices became artificial. Cox, ¶ 23,786 at 34,06. An "artificial" (also termed a "distorted") price is one "that does not reflect market or economic forces of supply and demand." *Id.* at 34,064. The Commission has further explained that:

> (T)o determine whether an artificial price has occurred one must look at the aggregate forces of supply and demand and search for those factors which are extraneous to the pricing system, are not a legitimate part of the economic pricing system, are not a legitimate part of the economic pricing of the commodity, or are extrinsic to that commodity market. When the aggregate forces of supply and demand bearing on a particular market are all legitimate, it follows that the price will not be artificial. On the other hand, when a price is affected by a factor which is not legitimate, the resulting price is necessarily artificial. Thus, the focus should not be as much on the ultimate price, as on the nature of the factors causing it.

Id. (*quoting* Indiana Farm Bureau, ¶ 21,796 at 27,288 n.2).

The settlement price volatilities of the P-Tech Options established by Eisler were compared with 1) different P-Tech expiration months; 2) trade-price volatilities of P-Tech Options; 3) historical volatilities; and 4) closing trade-price volatilities from options for two other technology-based stock indexes. Based upon the comparisons to these benchmarks, the settlement prices were artificial. There were no legitimate market forces to explain the settlement price distortions. Thus, the settlement prices are necessarily artificial.

4. Respondents Caused Artificial Prices

Causation of artificial prices is established when it is demonstrated that artificial market prices resulted from the conduct of a trader, or group of traders acting in concert, rather than the legitimate forces of supply and demand. *See* Cargill, 452 F.2d at 1171-72; Indiana Farm Bureau, at 27,286. The manipulator's actions need not be the sole cause of the artificial price. "It is enough for purposes of a finding of manipulation in violation of Sections 6(b) and 9 of the Act, that respondents' action contributed to the price [movement]." In re Kosuga, 19 A.D. 603, 624 (1960). *See also* Cox, at 34,066 (recognizing there can be multiple causes of an artificial price and holding that a charge of manipulation can be sustained where respondents' acts are a proximate cause of the artificial price). It is clear that Eisler and First West's conduct was at least a substantial cause of the artificial prices.

IV. OFFER OF SETTLEMENT

Respondents have submitted a Joint Offer in which, without admitting or denying the findings herein, they acknowledge service of the Complaint, receipt of this Order and admit the jurisdiction of the Commission with respect to the matters set forth in the Complaint and this Order. They further waive: (1) a hearing; (2) all post-hearing procedures; (3) judicial review by any court; (4) any objection to the staff's participation in the Commission's consideration of the Offer; (5) 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 (6) all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) 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 Regulations, 17 C.F.R. §§ 148.1, et seq. (2001), relating to, or arising from this action.

Respondents stipulate that the record basis on which this Order is entered consists solely of the Complaint and findings in this Order, the entry of which they have consented to in the Offer. Respondents consent to the Commission's issuance of this Order, which makes findings, as set forth herein, and orders that: (1) Respondents shall cease and desist from violating the provisions of the Act and Regulations that they have been found to have violated; (2) Respondents shall be permanently prohibited from trading on or subject to the rules of any registered entity; (3) Respondent Eisler's registration as a floor broker is permanently revoked; (4) Respondents shall pay a contingent civil monetary penalty ("CMP") of $4,923,000 pursuant to a payment plan as described below in Section VI; and (5) Respondents shall comply with their undertakings as set forth in the Offer and incorporated in this Order including, but not limited to: (a) reporting, disclosing and cooperating with the monitor; (b) agreeing to not make any fraudulent transfers; (c) agreeing never to apply for registration or seek exemption from registration with the Commission in any capacity, except as provided for in Regulation 4.14(a)(9), and never to engage in any activity requiring registration or exemption from registration, unless such exemption is pursuant to Regulation 4.14(a)(9); (d) agreeing to not take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or finding or conclusion in this Order or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; and (e) agreeing to not seek indemnification for any CMP payments made to the Commission.

V. FINDING OF VIOLATIONS

Solely on the basis of Respondents' consent, as evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that Respondents violated Sections 6(c), 6(d) and 9(a)(4) of the Act, 7 U.S.C. §§ 9, 15, 13(a) and 13b, and Section 33.9 of the Regulations, 17 C.F.R. § 33.9.

VI. ORDER

Accordingly, it is hereby ordered that:

1. Respondents shall cease and desist from violating Sections 9(a)(4), 6(c) and 6(d) of the Act, 7 U.S.C. §§ 13(a), 9, 15, and 13b, and Section 33.9 of the Regulations, 17 C.F.R. § 33.9;

2. Respondents are barred from trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, and directs all registered entities to refuse Respondents trading privileges thereon;

3. Respondent Eisler's registration as a floor broker is permanently revoked;

4. Respondents shall pay a contingent CMP in an amount of up to $4,923,000 which shall be paid pursuant to an annual CMP payment plan ("Annual CMP Payment") to an account designated by a monitor (the "Monitor")[6] named by the Commission. Each Annual CMP Payment will be calculated under the payment plan set forth in paragraph 5 below. Starting in calendar year 2004 and continuing for ten years[7] (or until the CMP is paid in full, if that happens first), Respondents will make the Annual CMP Payment on or before July 31 of the following year 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, or her successor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies Respondents and the name and docket number of the proceeding. Respondents shall simultaneously transmit a copy of the cover letter and the

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6 Respondents agree that the National Futures Association is hereby designated as the Monitor for a period commencing from the date of the Order until July 31, 2014. Notice to the Monitor shall be made to Daniel A. Driscoll, Esq., Executive Vice President, and Compliance Officer, or his successor, at the following address: National Futures Association, 200 West Madison Street, Chicago, IL 60606.

7 Respondents' ten year restitution period shall run from January 1, 2004 through December 31, 2013. Annual CMP Payments for a calendar year shall take place by July 31 of the following year. Therefore, the final Annual CMP Payment for the year 2013 will occur on or before July 31, 2014. Based on the information contained in Respondents sworn financial statements, tax returns and the other financial statements and records provided to the Monitor, the Monitor shall calculate the total amount of civil monetary penalty to be paid by Respondents for the year. On or before June 30 of each year, and starting in calendar year 2005 and concluding in calendar year 2014, the Monitor shall also send written notice to Respondents with instructions to pay by no later than July 31 of that year the amount of CMP to an account designated by the Monitor.

form of payment to the Monitor to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, N.W., Washington, D.C. 20581;

5. Respondents' Annual CMP Payment, to be made pursuant to paragraph 4 above, shall consist of a portion of (A) the adjusted gross income (as defined by the Internal Revenue Code) earned or received by Respondents during the course of the preceding calendar year, plus (B) all other net cash receipts, net cash entitlements or net proceeds of non-cash assets (collectively "Net Cash Receipts") received by Respondents during the course of the preceding calendar year. The Annual Restitution Payment or Annual CMP Payment will be determined as follows:

Where Adjusted Gross Income Plus Net Cash Receipts Total:	**Percent of Total to be Paid by Respondents is:**
Up to $25,000	0%
$25,000 to $50,000	20% of the amount above $25,000
$50,000-$100,000	$5,000 (=20% of the amount above $25,000) PLUS 30% of the amount above $50,000
Above $100,000	$5,000 (=20% of the amount above $25,000) PLUS $15,000 (=30% of the amount above $50,000) PLUS 40% of the amount above $100,000;

provided, however, that if Respondents can verify to the Monitor's satisfaction that they have paid restitution in any calendar year to any Exchange, individual or company who sustained losses as a result of Respondents' conduct in connection with the charges alleged in the Complaint, their Annual CMP Payment shall be the difference between the amount of the Annual CMP Payment calculated pursuant to the income-based schedule set forth above and the amount they paid in restitution. Should the amount of restitution paid by Respondents equal or exceed the amount of the Annual CMP Payment owed pursuant to the income-based schedule, an Annual CMP Payment shall not be owed for that calendar year;

6. In the event that Respondents do not make payments as directed in paragraphs 4 and 5 above, the Commission may bring a proceeding or an action to

enforce compliance with this Order and at its option may seek payment of the unpaid Annual CMP payment(s) or immediate payment of the entire amount of the civil monetary penalty required by paragraph 4. The only issue Respondents may raise in defense of such enforcement action is whether Respondents have made the Annual CMP Payment(s) as directed by the Monitor. Any action or proceeding brought by the Commission compelling payment of the Annual CMP Payments, due and owing pursuant to paragraph 5, above, or any portion thereof, or any acceptance by the Commission of partial payment of the Annual CMP Payments made by Respondents, shall not be deemed a waiver of Respondent's obligation to make further payments pursuant to the payment plan, or a waiver of the Commission's right to seek to compel payment of the remaining balance of the civil monetary penalty assessed against Respondent;

7. The Commission notes that an order requiring immediate payment of the entire civil monetary penalty against Respondents would be appropriate in this case, but does not impose it based upon Respondents' financial condition. Respondents acknowledge that the Commission's acceptance of the Joint Offer is conditioned upon the accuracy and completeness of the sworn Financial Statement Respondents have provided regarding their financial condition. Respondents consent that if at any time following entry of this Order the Division of Enforcement ("Division") of the Commission obtains information indicating that Respondents' representations concerning their financial condition were fraudulent, misleading, inaccurate or incomplete in any material respect at the time they were made, the Division may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondents provided accurate and complete financial information at the time such representations were made; (2) require immediate payment of the full amount of civil monetary penalty required in paragraph 4 above; and (3) seek any additional remedies that the Commission would be authorized to impose in this proceeding if Respondents' Offer had not been accepted. No other issues shall be considered in connection with this petition other than whether the financial information provided by Respondents was fraudulent, misleading, inaccurate or incomplete in any material respect, and whether any additional remedies should be imposed. Respondents may not, by way of defense to any such petition concerning the financial information provided by them, contest the validity of or, or the findings in, this Order, assert that payment of a civil monetary penalty should not be ordered, or contest the amount civil monetary penalty to be paid. If in such proceeding, the Division petitions for, and the Commission orders, immediate payment of less than the full amount of civil monetary penalty, such petition shall not be deemed a waiver of Respondents' obligation to pay the remaining balance of the civil monetary penalty assessed against them, pursuant to the payment plan; and

8. Respondents agree to comply with the undertakings set forth below in Section VII.

VII. UNDERTAKINGS

In consideration of the Commission's acceptance of this Offer, and solely by virtue of the Offer, Respondents hereby undertakes as follows:

A. Reporting/Disclosure Requirements to be Reviewed by Monitor

Respondents shall provide their sworn financial statement to the Monitor on June 30 and December 31 of each calendar year, starting on June 30, 2004, and continuing through and including December 31, 2013. The financial statement shall provide:

1. a true and complete itemization of all of Respondents rights, title and interest in (or claimed in) any asset, wherever, however and by whomever held;

2. an itemization, description and explanation of all transfers of assets with a value of $1,000 or more made by or on behalf of Respondents over the preceding six-month interval; and

3. a detailed description of the source and amount of all of Respondents income or earnings, however generated.

Respondents shall also provide the Monitor with complete copies of their signed, individual, joint and corporate federal income tax return, including all schedules and attachments thereto (e.g., IRS Forms W-2 and Forms 1099), as well as any filings they are required to submit to any state tax or revenue authority, on or before June 30 or each calendar year or as soon thereafter as the same are filed. In the event Eisler moves his residence or First West relocates its offices, each shall provide written notice of their new address to the Monitor and the Commission within ten (10) calendar days thereof.

If, during the same time period, Eisler elects to file a joint tax return, he shall provide all documents called for by this paragraph, including the signed and filed joint tax return, plus a draft individual tax return prepared on IRS Form 1040 containing a certification by a licensed certified public accountant that the "Income" section (currently lines 7-22 of Form 1040) truly, accurately and completely reflects all of Eisler's income, that the "Adjusted Gross Income" section truly, accurately and completely identifies all deductions that Eisler has a right to claim, and that the deductions contained in the "Adjusted Gross Income" section are equal to or less than 50% or the deductions that Eisler is entitled to claim on the joint tax return; provided however that Eisler may claim 100% of the deductions contained in the "Adjusted Gross Income" section that are solely his. Such individual tax return shall include all schedules and attachments thereto (e.g., IRS Forms W-2) and Forms 1099, as well as any filing required to be submitted to any state tax or revenue authority.

B. Cooperation

Respondents shall cooperate fully and expeditiously with the Monitor and the Commission in carrying out all aspects of their Annual CMP Payment, including providing sworn testimony, in explaining financial income and earnings, status of assets, financial statements, asset transfers, tax returns, and shall provide any information concerning themselves as may be required by the Commission. Furthermore, Respondents shall provide such additional information and documents with respect thereto as may be requested by the Monitor or the Commission.

C. Fraudulent Transfers

Respondents shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any person or corporation for the purpose of concealing such funds or property from the Monitor or the Commission.

D. Registration With The Commission

Eisler shall never apply for registration or claim exemption from registration with the Commission in any capacity, and shall never engage in any activity requiring registration or exemption from registration, except as provided for in Section 4.14(a)(9) of the Commission Regulations, 17 C.F.R. § 4.14(a)(9); or act as a principal, agent or officer of any person registered, exempted from registration or required to be registered with the Commission, unless such exemption is pursuant to Section 4.14(a)(9) of the Commission Regulations, 17 C.F.R. § 4.14(a)(9); and Eisler shall not, beginning on the date of the Order:

1. directly or indirectly act as a principal, partner, officer, or branch office manager of any entity registered or required to be registered with the Commission; or

2. directly or indirectly act in any supervisory capacity over anyone registered or required to be registered with the Commission.

E. Public Statements

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

F. Indemnification

Respondents agree never to seek to be indemnified or exercise an indemnification agreement, clause or policy from any source including, but not limited to, the New York Board of Trade, the New York Futures Exchange, the New York Cotton Exchange or any insurance or indemnification policy held by the New York Board of Trade, the New York

Futures Exchange or the New York Cotton Exchange, for any and all monies paid to the Commission as a CMP.

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

By the Commission.

Jean A Webb

Jean A. Webb
Secretary to the Commodity Futures
Trading Commission

Date: January 20, 2004