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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Newport News Division**

**COMMODITY FUTURES TRADING  
COMMISSION,**

**Plaintiff,**

**vs.**

**MICHAEL HAYES, a.k.a.  
FRANK RICHARDS, a resident of the  
State of Virginia, and**

**COLDWELL PUBLISHING, INC., a  
California corporation,**

**Defendants.**

Case No. *4:06cv130*

**COMPLAINT FOR INJUNCTIVE AND  
OTHER EQUITABLE RELIEF AND FOR  
CIVIL PENALTIES UNDER THE  
COMMODITY EXCHANGE ACT, AS  
AMENDED, 7 U.S.C. §§ 1 et seq.**

I.

**JURISDICTION AND VENUE**

1. Plaintiff United States Commodity Futures Trading Commission (“CFTC” or “Commission”) brings this action against the Defendants for engaging in acts and practices that violate provisions of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 1 *et seq.* (2002) and Commission Regulations promulgated thereunder (“Regulations”), 17 C.F.R. §§ 1.1 *et seq.* (2006).

2. This Court has jurisdiction over this pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), 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.

3. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C.A § 13a-1(e) (2002), in that Defendants are found in, inhabit, or transact business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places. Specifically, Defendant Michael Hayes, a.k.a. Frank Richards (“Hayes”), is a Virginia resident and transacts and has transacted the majority of his business within this district. Defendant Coldwell Publishing (“Coldwell”) is a corporation registered in California. However, Hayes, is Coldwell’s President and its sole employee. Hayes controlled Coldwell’s activities from his Virginia residence.

## II.

### SUMMARY

4. From at least January 1, 2001 through 2004 (“relevant time”), defendant Hayes, under the pseudonym Frank Richards, authored and sold through direct mail advertising, approximately 15,000 copies of a book entitled THE INSIDER’S PROFIT MATRIX (“IPM”). The IPM book describes a system for trading commodity futures and options on futures. Hayes uses Coldwell to publish and distribute the IPM book, which is sold for \$79.95 plus shipping and handling. Hayes also uses Coldwell to publish and distribute promotional material for the IPM book. The IPM promotional material, which Hayes authored, is replete with misrepresentations, half-truths and lies. The main selling point in IPM’s promotional material, is exemplified in the following statement: “[a]t one point my system was pinpointing trades worth over \$38,000 per week and you’ll be trading with the exact same system that showed these phenomenal profits.” IPM’s promotional material misleads the public into believing that the performance record and profit results by IPM, were based on actual trading when, in fact, many of numbers used to derive IPM’s purported performance record was not based on any actual trading which occurred on an organized exchange and, to some extent, were made-up. In addition to overstating the profit potential of the trading system, Hayes’ mass-mailed IPM promotional material failed to adequately warn potential purchasers of the risks inherent in futures and options trading and failed to include the appropriate required cautionary statement that the touted performance results were not based on actual trading using the IPM trading system. Hayes’ IPM made gross sales of more than \$1 million. After expenses related to publishing and distributing IPM, Hayes made approximately \$80,000 per year on IPM’s sales.

5. Accordingly, pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2002), the Commission brings this action to enjoin the unlawful acts and practices of the Defendants and to bar them from engaging in the solicitation of customers in relation to any commodity futures and options related activity. The Commission seeks civil monetary penalties in the amount of not more than the higher of \$120,000 for violations occurring prior to October 23, 2004, and \$130,000 for violations occurring after October 23, 2004, or triple the monetary gain to the Defendants for each violation. In addition, the Commission seeks disgorgement of the Defendants' ill-gotten gains, and such other equitable relief as the Court may deem necessary and appropriate.

6. Unless enjoined by this Court, the Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and in similar acts and practices, as more fully described below.

### III.

#### **THE PARTIES**

##### **Plaintiff**

7. Plaintiff United States Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Commodity Exchange Act, 7 U.S.C. §§ 1 *et seq.* (2002), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2006).

##### **Defendants**

8. Michael Hayes, 38, currently resides in Poquoson, Virginia. He utilizes the pseudonym "Frank Richards" to describe himself as IPM's author and as author of the promotional material used to sell the book. Hayes has never been registered in any capacity with the Commission.

9. Coldwell Publishing, Inc., has been a California corporation since 1994 and during the relevant time maintained an address at a mailbox drop in Studio City, California as a business address. The sole purpose of Coldwell is to sell IPM and, to a much lesser extent, a sister book written by Hayes entitled ADVANCED TRADING TECHNIQUES that, on information and belief, Coldwell ceased offering in the mid-1990s. Hayes used Coldwell to publish IPM and to distribute IPM's promotional material. Hayes is Coldwell's president and its only employee. Coldwell has no physical location. All mail addressed to Coldwell is forwarded from a mailbox drop in California to Hayes in Virginia. Coldwell has never been registered with the Commission in any capacity.

#### IV.

#### FACTS

##### A. Statutory Background

10. A commodity trading advisor ("CTA") is defined in Section 1a(6) of the Act, 7 U.S.C. § 1a(6), and means, in part, any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility.

11. Section 4o(1) of the Act, 7 U.S.C. § 6o(1), makes it unlawful for a CTA, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly: (A) to employ any device, scheme, or artifice to defraud any client or 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.

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

13. Commission Regulation 4.41(b), 17 C.F.R. § 4.41(b), prohibits any person from presenting the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest or series of transactions in a commodity interest of a CTA, unless it is accompanied by the proscribed cautionary statement set out in Regulation 4.41(b)(1)(i) or (ii).

**B. Hayes and Coldwell Marketed IPM as a Trading System and Promised that He Would Provide Individualized Commodity Trading Advice**

14. During the relevant time, Hayes sold approximately 15,000 copies of IPM for \$79.95. Hayes authored IPM under the pseudonym Frank Richards. Coldwell received more than \$1 million from IPM sales. After expenses related to publishing and distributing IPM, Hayes received approximately \$80,000 per year in profits.

15. IPM describes a system for trading commodity futures and options on futures and lists several futures trading commission merchants through which IPM purchasers can trade.

16. IPM's promotional material repeatedly refers to IPM as a "system", including calling it the "most advanced sure-fire winning system ever created." IPM's promotional material also claims that the IPM system "calls all the shots. There is no guesswork. You will know exactly when to place each trade for maximum profits."

17. IPM's promotional material promises that Hayes will provide personalized advice to purchasers, stating: "You will have unlimited written consultation with me [Hayes]. You can

contact me anytime you wish, and I will personally work with you to make sure you understand everything completely.”

**C. The IPM Promotional Material Was Fraudulent**

18. IPM’s promotional material, put out under the name of Coldwell, was authored entirely by Hayes. During the relevant time, Hayes used Coldwell to purchase mailing lists and mail out thousands of promotional material to the public soliciting purchasers for IPM.

19. Hayes misrepresented his trading experience in IPM’s promotional material. Although the Hayes authored the IPM book, IPM’s promotional material for the book included a picture of Hayes’ step-father, who had nothing to do with the writing of the book, implying that the IPM trading system was developed by someone significantly older, with significant trading experience. Moreover, Hayes, promotional material referred to Hayes as a “market expert,” when in fact, Hayes had limited trading experience.

20. The Defendants’ IPM promotional material also injects a false sense of urgency and selectivity to encourage IPM purchases, stating, at the end of the promotional material: “It’s important that you act quickly. I am carefully limiting the amount of people who will be trading because I can only handle so many apprentices. Therefore, this is an extremely limited offer.” This statement was false. Hayes, through Coldwell, continued to mail the IPM promotional material to the public after 10,000, and even 15,000, of the books had been sold.

21. The Defendants’ IPM promotional material contained numerous misrepresentations of material fact. These misrepresentations fall into two major categories: (a) promises of large profits and (b) representations of hypothetical or otherwise fictitious trading as real trading. The promises of huge profits included such statements as:

- Market Expert Reveals – How you can make over \$1,000,000 a year trading commodities.

- \$200 to \$2,136,000 in 2 years. Actual secrets revealed. ...”
- The Sure Thing Trades – the most advanced sure-fire winning system ever created.
- How would you like to make \$50,000 in a single month? All you have to do is learn these secrets.
- If a few key indicators line up at the critical time, it is actually possible to predict where the market is going.
- If you know with near certainty that the market is going to skyrocket, you can achieve unlimited wealth with virtually no effort.
- It’s as close to a sure thing as you’re going to see.

22. Hayes knowingly or recklessly included the material misrepresentations in paragraph 21 in the IPM promotional material. Hayes does not know of any trader who used IPM to achieve trading results that resembled any of the statements identified in paragraph 21.

23. IPM’s promotional material conveyed a false impression to potential IPM purchasers that the performance results touted represented actual trading. The representations of hypothetical or otherwise fictitious trading as real trading included statements such as:

- \$200 to \$2,136,000 in 2 years. Actual secrets revealed...
- Take a look at this track record. Start out with \$200, my system has shown historical profits of \$18,389,000, over \$2 million of that was generated in the first 2 years.
- The Insider’s Profit Matrix has been historically proven year in and year out.
- At one point, my system was pinpointing trades worth over \$38,000 per week and you’ll be trading with the exact same system that showed these phenomenal profits.

24. Hayes knowingly or recklessly included the material misrepresentations in paragraph 23 in IPM’s promotional material. He knew that he had not made the represented trading profits through his own trading using IPM. He did not know of any other person who made the represented trading profits using IPM. Hayes knew that the reported results were



hypothetical, simulated or made-up. Hayes did not have any reasonable basis for claiming a highly profitable track record.

25. In IPM's promotional material, Hayes presented hypothetical and/or fabricated IPM performance results without the accompaniment of the appropriate cautionary statement required by Commission Regulation 4.41, 17 C.F.R. § 4.41 (2006).

V.

**VIOLATIONS OF THE  
COMMODITY EXCHANGE ACT**

**COUNT I**

**VIOLATIONS OF SECTION 4o(1)(A) AND  
4o(1)(B) OF THE ACT AND COMMISSION  
REGULATION 4.41(a): FRAUD BY A CTA**

26. Paragraphs 1 through 25 are realleged and incorporated herein.

27. During the relevant time, Hayes acted as a CTA in that, for compensation or profit, he engaged in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in commodity futures and commodity options.

28. During the relevant time, Hayes violated Sections 4o(1)(A) and 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(A) and 6o(1)(B), in that, by use of the mails, he directly or indirectly employed a device, scheme, or artifice to defraud clients or prospective clients, and he engaged in transactions, practices or courses of business which operated as a fraud or deceit upon such persons. The devices, schemes, artifices, transactions, practices or courses of business included, but were not limited to, using false and misleading promotional material which overstated the profit potential for the trading system he was selling, while failing to adequately warn of the

risks inherent in trading commodity futures and commodity options, and representing hypothetical or simulated trading results as actual trading results. Hayes engaged in these fraudulent acts, misrepresentations and omissions to convince members of the public to purchase the trading system contained in his IPM book.

29. During the relevant time, Hayes violated Commission Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2006), in that he advertised in a manner which employed a device, scheme or artifice to defraud customers or prospective customers or involved transactions, practices or a course of business which operated as a fraud or deceit upon any such persons, including, but not limited to, the promotional material described above.

30. Hayes' actions described in this count were done within the scope of his employment and agency with Coldwell. Therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), Coldwell is liable for Hayes' violations of Sections 4o(1)(A) and 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(A) and 6o(1)(B), and Commission Regulation 4.41(a), 17 C.F.R. § 4.41(a).

31. Each material misrepresentation or deceptive omission made during the relevant time including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1)(A) and 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(A) and 6o(1)(B), and Commission Regulation 4.41(a), 17 C.F.R. § 4.41(a).

## COUNT II

### **VIOLATIONS OF COMMISSION REGULATION 4.41(b): FAILURE TO GIVE APPROPRIATE CAUTIONARY STATEMENT**

32. The allegations contained in paragraphs 1 through 25 above are realleged and incorporated herein.

33. During the relevant time, Hayes violated Commission Regulation 4.41(b), 17 C.F.R. § 4.41(b) (2006). Hayes, through IPM and IPM's promotional material, presented the performance of a simulated or hypothetical commodity interest account, transaction in a commodity interest or series of transactions in a commodity interest, without accompaniment of the following statement:

(i) "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.

34. Hayes' actions described in this count were done within the scope his employment and agency with Coldwell. Therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), Coldwell is liable for Hayes' violations of Sections 4o(1)(A) and 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(A) and 6o(1)(B), and Commission Regulation 4.41(b), 17 C.F.R. § 4.41(b).

35. Each failure to include the cautionary statement in paragraph 34 made during the relevant time, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.41(b).

## VI.

### RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2002), and pursuant to its own equitable powers:

A. Find that Defendants Hayes and Coldwell violated Sections 4o(1)(A) and 4o(1)(B) of the Act, 7 U.S.C. §§ 6o(1)(A) and 6o(1)(B) (2002); and Commission Regulations 4.41(a) and 4.41(b), 17 C.F.R. §§ 4.41(a) and (b) (2006);

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

1. While acting as a CTA, employing any device, scheme, or artifice to defraud any client or prospective client; or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client, by use of the mails or any means or instrumentality of interstate commerce, in violation of Sections 4o(1)(A) and 4o(1)(B) of the Act, 7 U.S.C. §§ 6o(1)(A) and 6o(1)(B);
2. While acting as a CTA, advertising in a manner which employs any device, scheme or artifice to defraud any client or prospective client; or advertising in a manner which involves any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client, in violation of Regulation 4.41(a), 17 C.F.R. § 4.41(a); and
3. Presenting the performance of any simulated or hypothetical commodity interest account, transactions in a commodity interest or series of transaction in a commodity interest of a commodity pool operator, commodity trading advisor, or any principal thereof, unless such performance is accompanied by an appropriate cautionary statement, as described in Commission Regulation 4.41(b)(1)(i) or (ii), in violation of Regulation 4.41(b), 17 C.F.R. § 4.41 (b);

C. Enter an order directing that the Defendants provide the Plaintiff with immediate and continuing access to Defendants' books and records, including access to their computer files containing accounting information (*i.e.* Quickbooks, or similar software), make an accounting to the Court of all of the Defendants' assets and liabilities, together with all funds they received from clients, including the names, addresses and telephone numbers of any such clients from January 2001 up to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from clients, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from January 2001 up to and including the date of such accounting. The accounting shall be provided in an electronic format such as Quicken, Excel, or other accounting or electronic format spreadsheet;

D. Enter an order requiring the Defendants immediately to identify and provide an accounting for all assets and property that they currently maintain outside the United States, including but not limited to all funds on deposit in any financial institution, futures commission merchants, bank or savings and loan account held by, under the control of, or in the name of the defendants, whether jointly or otherwise, and requiring defendants to repatriate all funds held in such accounts by paying them to the Clerk of the Court or as otherwise ordered by the Court, for further disposition in this case;

E. Enter an order prohibiting the Defendants, all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of the 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:

1. Engaging in the business of advising customers, giving price quotations, or other information, either directly or through publications, writings, or electronic media, as to the value or the advisability of trading in any contract of sale of a commodity for future delivery or an option thereon,

except as provided or in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2006), and permanently prohibiting Defendants from engaging in any activity requiring registration or exemption from registration, or acting as a principal, agent or officer of any person registered, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2006);

2. Engaging in, controlling, or directing the trading of any commodity futures and options accounts, on their own behalf or for on behalf of any other person or entity, whether by power of attorney or otherwise;
3. Introducing customers to any other person engaged in the business of trading in commodity futures and options;
4. Placing orders in connection with the purchase or sale of commodity futures and options contracts for themselves and others; and
5. Otherwise engaging in any business activities related to commodity futures and options trading;

F. Enter an order requiring the Defendants to disgorge all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest;

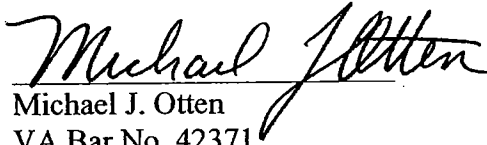
G. Enter an order requiring the Defendants to pay civil monetary penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of \$120,000 for each violation before October 24, 2004 and \$130,000 for violations after October 24, 2004, or triple the monetary gain to the defendants for each violation of the Act and Regulations described herein;

H. Enter an order requiring the defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (1994); and

I. Enter an order for such further relief, as this Court may deem necessary and appropriate under the circumstances.

Date: September 29, 2006

Respectfully submitted,



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