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UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of	:	CFTC Docket No: 04- 28
	:	
The Options Advisors, LLC,	:	ORDER INSTITUTING
Mark Melin, and	:	PROCEEDINGS PURSUANT TO
David Farra,	:	SECTIONS 6(c) AND 6(d) OF THE
	:	COMMODITY EXCHANGE ACT,
Respondents.	:	MAKING FINDINGS AND IMPOSING
	:	REMEDIAL SANCTIONS
	:	

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that The Options Advisors, LLC ("Options Advisor"), through its principals, Mark Melin ("Melin") and David Farra ("Farra") (collectively "Respondents") has violated 40(1)(A) and (B) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 60(1)(A) and (B) (2002), and Sections 4.41(a)(1) and (2) of the Commission's Regulations promulgated thereunder ("Regulations"), 17 C.F.R. §§ 4.41(a)(1)-(2) (2004). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents engaged in the violations set forth herein, and to determine whether any order shall be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondents have submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Without admitting or denying the findings of fact herein, Respondents consent to the entry of this Order, and acknowledge service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Act, Making Findings and Imposing Remedial Sanctions ("Order"). Respondents consent to the use by the Commission of the findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.¹

¹ Respondents do not consent to the use of its Offer or the findings in this Order as the sole basis for any other proceeding brought by the Commission, other than a proceeding in bankruptcy, or to enforce the terms of the Order, or with respect to registration issues. Respondents do not consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, by any other party 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 at least November 2003 through January 2004 (the “relevant time period”), Options Advisors, by and through Melin and Farra, acted as an unregistered commodity trading advisor (“CTA”) and used misleading and false advertising to solicit members of the public in the conduct of Options Adviser’s Internet-based commodity trading advisory business.

During the relevant time period, Melin and Farra—on behalf of Options Advisors—offered and sold Dow Trader, a subscription-based commodity futures and options trading advisory service, to the public through the www.guaranteedtrades.com (“Guaranteedtrades.com”) and www.dowoptionstrader.com (“Dowoptionstrader.com”) websites. The trading advisory service provided non-personalized real time trading signals to its subscribers. None of the Respondents directed the trading in any customer account.

In advertising on the [Guaranteedtrades.com](http://www.Guaranteedtrades.com) website, Melin and Farra guaranteed that the Dow Trader futures and options trading advisory service would generate trading profits for its subscribers. The “guarantee” referenced in the [Guaranteedtrades.com](http://www.Guaranteedtrades.com) website’s assured subscribers that the service would generate trading profits for them or the service would be provided for free. This guarantee of profitability misrepresented the risks associated with futures and options trading, and overstated the likelihood that purchasers of the trading advisory system would make money.

By making such material misrepresentations, Melin and Farra caused Options Advisors to violate Sections 4o(1)(A) and (B) of the Act and Commission Regulations 4.41(a)(1) and (2). Melin and Farra’s are liable for Options Advisor’s violations of Sections 4o(1)(A) and (B) of the Act and Commission Regulations 4.41(a)(1) and (2) pursuant to Section 13(b) of the Act, 7 U.S.C. § 13(b) (2002)

B. SETTLING RESPONDENTS

The Options Advisors, LLC is an Illinois limited liability company organized on June 30, 2003, which has its principal place of business in Clarendon Hill, IL 60514. David Farra and Mark Melin are the only members of Options Advisors. Options Advisors has never been registered with the Commission in any capacity.

Mark Melin is a principal, president, and controlling person of Options Advisors. Melin resides in Hinsdale, IL 60521. Melin has never been registered with the Commission in any capacity.

David Farra is a principal and controlling person of The Options Advisors, LLC and resides in Clarendon Hill, IL 60514, which is Options Advisors’ principal place of business.

Farra is currently registered with the Commission as an Associated Person (NFA ID #237424) of MD Trading Group, LLC (NFA ID #0332343) and was previously registered with the Commission as a floor broker with privileges at the Chicago Mercantile Exchange.

C. FACTS

1. Products and Services Sold through the Internet

From at least November 2003 through January 2004, Melin and Farra—on behalf of Options Advisors—marketed and sold the Dow Trader futures and options trading advisory service to the public through the Guaranteedtrades.com and Dowoptionstrader.com websites.² Melin and Farra sold the Dow Trader futures and options trading advisory service to subscribers at a cost of between \$38 and \$186 per month. The Dow Trader futures and options trading advisory service provides specific trading recommendations for Dow Jones Industrial Average futures and Dow Jones Industrial Average options on futures.

Melin and Farra distributed their trading recommendations to subscribers in a newsletter sent via e-mail. Additionally, Melin and Farra offered an “Autotrade” function to subscribers by which the specific trading recommendations could be sent directly to the subscriber’s broker for execution.

2. Respondents’ Guarantee

Melin and Farra promoted the Dow Trader futures and options trading advisory service through the Guaranteedtrades.com website. According to the Guaranteedtrades.com website and articles that Melin authored promoting the Dow Trader futures and options trading advisory service, a subscriber to the trading advisory service could make money in virtually any market condition.³

The “guarantee” referenced in the Guaranteedtrades.com website’s URL was designed by Melin to promote the Dow Trader futures and options trading advisory service and to assure subscribers thereto that the service would generate trading profits for them or the service would be provided for free. Specifically, on a webpage bearing the title “Guaranteed Profits” at the Guaranteedtrades.com website, the guarantee offered by Melin and Farra provided:

This investment method works so well, we make the following guarantee: If it doesn’t generate profits in a given month, you don’t pay for the service for that month -- you are credited one additional

² Options Advisors, through Melin and Farra, had provided the Dow Trader futures and options trading advisory service free to subscribers from at least December 2002 until November 2003. However, it was only in November 2003 that Melin and Farra began to offer the advisory service for a fee.

³ The title of an article that Melin used to promote the system was “How to Make Money in Up, Down or Sideways Markets: Hedging Options and Futures for Consistent Profits.”

month to your account. We make this guarantee because we are almost always profitable. However, trading futures and options involves substantial risk. We do not guarantee that you will not lose money. We guarantee that if you do lose money in a particular month, you will be given an additional month of the service free.

In addition to the Guaranteedtrades.com website, Melin and Farra also promoted the Dow Trader futures and options trading advisory service through a similar website located at Dowoptionstrader.com. According to the Guaranteedtrades.com and Dowoptionstrader.com websites, the Dow Trader futures and options trading advisory service generated an average annual rate of return of over 100%. The websites also included testimonials from subscribers. One of these testimonials claimed that the subscriber generated a return of over 40% in 6 months, while another claimed that the subscriber “rarely experienced a losing week.” The websites also included pictures of Melin and Farra. Farra is pictured throughout the websites wearing his floor trader’s jacket.

Throughout the relevant time period, Melin and Farra were the principals and controlling persons of Options Advisors. Together, Melin and Farra developed the trading system which Options Advisors later sold, but there was no transfer of ownership of the trading system. Melin wrote, designed and developed the Guaranteedtrades.com website and registered the website through another company that he owned and operated. Melin’s assistant was responsible for administering some of the day-to-day operations of Options Advisors, but was not an employee. Farra’s home address is the registered principal place of business for the Options Advisors. Both Farra and Melin are signatories on the Options Advisor bank account and both Farra and Melin actively solicited business agreements with third parties.

D. LEGAL DISCUSSION

1. Respondents Committed Solicitation Fraud in Violation of Sections 4o(1)(A) and (B) of the Act and Regulations 4.41(a)(1) and (2)

Options Advisors, through Melin and Farra, while acting as a CTA, violated Sections 4o(1)(A) and (B)⁴ of the Act and Commission Regulations 4.41(a)(1) and (2)⁵ by

⁴ 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.

⁵ 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

misrepresenting to subscribers and prospective subscribers in written statements on the Guaranteedtrades.com and Dowoptionstrader.com websites the risks associated with futures and options trading and the potential profit that subscribers to the Dow Trader futures and options trading advisory service could expect to achieve.

To violate Section 4o(1) of the Act, Options Advisors must have acted as a CTA or operated a commodity pool. Section 1a(6) of the Act defines a CTA as “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 advisability of trading in any” commodity futures contract or options contract. 7 U.S.C. § 1a(6). Commodity trading advice includes the sale of trading systems that generate specific trade recommendations. *CFTC v. Avco Financial Corp.*, 28 F. Supp.2d 104, 118-19 (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) (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 Technical 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). Options Advisors, through Melin and Farra, acted as a CTA because it gave commodity futures and options trading advice for compensation or profit through the sale of the Dow Trader futures and options trading advisory service.

Section 4o(1)(A) and (B) of the Act prohibit both registered and unregistered CTAs from making material misrepresentations and omissions to their clients regarding futures and options transactions. *R&W Technical Services*, 205 F.3d at 170 (prohibiting fraud by an unregistered CTA who sold trading systems to the public). Similarly, Commission Regulations 4.41(a)(1) and (2) prohibit a CTA, whether registered or unregistered, from advertising in a fraudulent or misleading manner. *In re Staryk*, [1996-1998 Transfer Binder] Comm.Fut.L.Rep. (CCH) ¶ 27,206 at 45,810 (CFTC Dec. 18, 1997); *Kelley v. Carr*, 442 F.Supp. 346, 351-354 (W.D.Mich. 1977), *aff’d in part and rev’d in part*, 691 F.2d 800 (6th Cir. 1980).

Generally, omissions and misrepresentations of fact concerning the likelihood of profiting from commodity futures and commodity options transactions are material and violate the antifraud provisions of the Act. *See, e.g., CFTC v. Avco Financial Corp.*, 28 F. Supp.2d at 115-16. 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 a violation of Section 4o(1)(A) or Regulation 4.41(a)(1) requires proof of scienter, a violation of Section 4o(1)(B) does not. *See In re Slusser*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,701 at 48,315 (CFTC July 19, 1999), *aff’d in relevant part, Slusser v.*

prospective client; or (2) [i]nvolves any transaction, practice or course of business which operates as a fraud or deceit upon any . . . client or any prospective . . . client.

CFTC, 210 F.3d 783 (7th Cir. 2000). Neither does a violation of Regulation 4.41(a)(2) require proof of scienter. *See Commodity Trend Serv. v. Commodity Futures Trading Commission*, 233 F.3d 981, 993 (7th Cir. 2000). Melin and Farra acted with scienter because they knowingly incorporated guarantees of trading profits on the Guaranteedtrades.com website with the intention of attracting subscribers for the Dow Trader futures and options trading advisory service.

Melin and Farra caused Options Advisors to violate Sections 4o(1)(A) and (B) of the Act and Commission Regulation 4.41(a)(1) and (2) by guaranteeing that prospective subscribers would be able to trade profitably by following the specific trading recommendations contained in e-mail newsletters sent to Dow Trader futures and options trading advisory service subscribers. Guarantees of profitability are inherently fraudulent because, given the uncertainties in the market, they misrepresent the likelihood of profiting from commodity futures and options transactions, as well as the substantial risks of investing in commodity futures and options. *Munnell v. Paine Webber*, Comm. Fut. L. Rep. (CCH) ¶ 23,313 (CFTC Oct. 8, 1986) (finding that investment advisor's statement that client could conservatively expect a return of 32% amounted to guarantee of profitability and that "[s]uch guarantees are inherently fraudulent."); *see also Commodity Futures Trading Commission v. Wall Street Underground*, 281 F.Supp.2d 1260, 1270 ("Likewise, promises and guarantees of profit, given the uncertainties of the marketplace, are inherently fraudulent"); *Commodity Futures Trading Commission v. Swannell*, Comm. Fut. L. Rep. (CCH) ¶ 28,238 (CFTC Sep. 6, 2000) (finding that respondents violated antifraud provisions of Act by guaranteeing that customers would double their investment capital in one year). That the guarantee was limited to the provision of a free month's subscription to the Dow Trader futures and options trading advisory service if the subscriber's trading did not prove to be profitable does not limit the fraud inherent in a guarantee. *R&W Technical Services*, 205 F.3d at 170 ("The existence of a limited refund policy coupled with extravagant claims of false profits only confirms that the petitioners misrepresented the existence of substantial risks inherent in futures trading"). Options Advisors, by and through Melin and Farra, therefore violated Sections 4o(1)(A) and (B) of the Act and Commission Regulation 4.41(a)(1) and (2) by guaranteeing that subscribers would achieve profits if the subscribers followed the trading recommendations.

Further, because Melin and Farra were the controlling persons of Options Advisors, they are liable for Options Advisors' violations. Section 13(b) of the Act provides:

Any person who directly or indirectly, controls any person who has violated any provision of this Act or any other rules, regulations, or orders issued pursuant to this Act may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person.

7 U.S.C. § 13(b). Section 13(b) further provides that the Commission has the burden of proving that the controlling person did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation. *Id.* Because Options Advisors' violations were directly caused by Melin and Ferra, they knowingly induced these violations.

IV.

OFFER OF SETTLEMENT

Respondents have submitted a Joint Offer of Settlement ("Offer") in which they, subject to the foregoing, acknowledge service and receipt of this Order; admit the jurisdiction of the Commission with respect to the matters set forth in the Order; waive 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 they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000), and 28 U.S.C. § 2412 (2000), and the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1-30 (2004), relating to or arising from this action.

Respondents stipulate that the record basis on which this Order is entered consists solely of the Order and the findings consented to in the Offer that are incorporated in this Order. Respondents consent to the Commission's issuance of this Order, which makes findings, as set forth above, and orders that Respondents cease and desist from violating the provisions of the Act and Regulations they have been found to have violated; that requires Respondents make full restitution to subscribers of the Dow Trader futures and options trading advisory service for the months of November and December 2003 and January 2004, and pay a civil monetary penalty of \$10,000; and that Respondents comply with their undertakings as set forth in their Offer and incorporated in this Order.

V.

FINDINGS OF VIOLATIONS

Solely on the basis of the consents evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that Options Advisors violated Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B) (2002), and Sections 4.41(a)(1) and (2) of the Commission's Regulations, 17 C.F.R. §§ 4.41(a)(1)-(2) (2004), and Melin and Farra are liable for such violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13(b).

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

1. Respondents cease and desist from violating Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B) (2002), and Sections 4.41(a)(1) and (2) of the Commission's Regulations, 17 C.F.R. §§ 4.41(a)(1)-(2) (2004);

2. Respondents pay a civil monetary penalty in the amount of ten thousand dollars (\$10,000);⁶
3. Respondents make full restitution to all subscribers of the Dow Trader futures and options trading advisory service that paid for trading signals between November 2003 and January 2004, identified in Attachment A hereto, within 10 days of the date of this Order. Respondents shall submit proof to the Commission that restitution has been made within five (5) days of payment by submitting proof of payment to Joseph A. Konizeski, Division of Enforcement 1155 21st Street N.W., Washington, DC 20581;
4. Respondents shall comply with the following undertakings as set forth in their Offer:
 - A. Respondents shall not misrepresent, expressly or by implication:
 1. the performance, profits or results achieved by, or the results that can be achieved by, users, including themselves, 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. Respondents 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.
 - C. Respondents shall not represent, expressly or by implication:

⁶ Respondents shall pay the total amount in two equal installments, the first of which is due within ten days of the date of the Order and the second payment shall be made within 30 days of the due date of the first payment; payment is to be made by electronic funds transfer, 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 a letter that identifies Respondents as the payees and the name and docket of this proceeding. Respondents shall simultaneously transmit a copy of the cover letter and the form of payment to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if Respondents fail to pay the full amount within fifteen (15) days of the due date, they shall be automatically prohibited from the privileges of all registered entities until they show to the satisfaction of the Commission that payment of the full amount with interest thereon to the date of payment has been made.

1. the performance, profits or results achieved by, or the results that can be achieved by users, including themselves, 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;

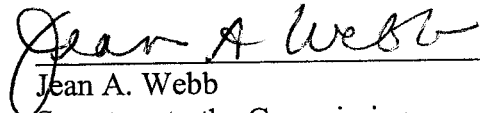
3. the performance, profits, results achieved by any user, or represented in any testimonial or endorsement of the commodity futures or options trading method, method or advisory service represents the typical or ordinary experience of members of the public who use the method, method or advisory service;

unless: (a) Respondents possess and rely 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, Respondents maintain 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.

D. Public Statements. By neither admitting nor denying the findings of fact or conclusions of law, 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 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 Respondents' (1) testimonial obligations, or (2) 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 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 Commission

Commodity Futures Trading Commission

Dated: September 30, 2004