

United States of America  
Before the  
Commodity Futures Trading Commission

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COMMODITY FUTURES TRADING COMMISSION

In the Matter of

CFTC Docket No. 04-14

JEFFREY W. ALLEN,

**ORDER INSTITUTING PROCEEDINGS  
PURSUANT TO SECTIONS 6(c) AND 6(d)  
OF THE COMMODITY EXCHANGE  
ACT, MAKING FINDINGS AND  
IMPOSING REMEDIAL SANCTIONS**

**Respondent.**

**I.**

The Commodity Futures Trading Commission ("Commission") has reason to believe that Jeffrey W. Allen ("Allen") has violated Section 4m(1) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 6m(1) (2002), and Commission Regulations 4.31(a) and (b), 17 C.F.R. §§ 4.31(a) and (b) (2003). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether Allen engaged in the violations set forth herein, and to determine whether any order should be issued imposing any remedial sanctions.

**II.**

In anticipation of the institution of an administrative proceeding, Allen has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Without admitting or denying any of the allegations of the findings herein, and prior to any adjudication on the merits, Allen acknowledges service of this Order Making Findings and Imposing Remedial Sanctions ("Order"). Allen consents to the use of the findings herein in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.<sup>1</sup>

<sup>1</sup> Allen does not consent to the use of the Offer or this Order as the sole basis for any other proceeding brought by the Commission other than a proceeding to enforce the terms of this Order, nor does Allen consent to the use of the Offer, or the findings in the Order consented to in the Offer, by any other person or entity in this or any other proceeding. The findings made in the Order are not binding on any other person or entity named as a defendant or respondent in any other proceeding.

### III.

The Commission finds the following:

#### A. SUMMARY

From April 2001 to the present, Jeffrey W. Allen ("Allen"), held himself out generally to the public as a Commodity Trading Advisor ("CTA"), and while unregistered, directed the trading in the commodity interest accounts of at least six members of the general public. As a CTA required to be registered under the Act, Allen also failed to provide required disclosure documents to his clients. Because he held himself out generally to the public as a CTA and directed the trading in client accounts, Allen should have registered with the Commission as a CTA. *See* 7 U.S.C. § 6m(1) (2002) and 17 C.F.R. § 4.14(a)(9) (2003). Accordingly, Allen violated Section 4m(1) of the Act, by operating as a CTA without registering as such. Allen also did not provide his clients with a Disclosure Document containing the information set forth in Commission Regulations 4.34 and 4.35, 17 C.F.R. § 4.34 and 4.35 (2003), and thereby violated Commission Regulation 4.31.

#### B. RESPONDENT

**Jeffrey W. Allen** is an individual who resides in Houston, TX. Allen never registered with the Commission in any capacity.

#### C. FACTUAL BACKGROUND

From April 2001 through October 2002, Allen was granted six powers of attorney to trade on behalf of others. Two other clients each signed a "Letter of Direction" directing their account executive at the FCM where they maintained an account to trade according to Allen's instructions. Allen actually directed the trading in at least six of the eight accounts. At least five of these account holders were members of the public with whom Allen was not previously acquainted and to whom Allen offered his trading services.

Allen offered his CTA services to the public and directed trading in client accounts as a side deal for himself, while working as a sales person for firms that developed and marketed commodity trading computer software. For instance, Allen would tell potential purchasers of a trading system that produced market support and resistance indicators that he could personally interpret these indicators on their behalf and trade for the prospective client. Some individuals accepted Allen's offer for him to become their CTA and Allen then directed the trading in their accounts.

Allen further held himself out as a CTA by sending several clients an "Investment Management Agreement," which provided that Allen would be individually paid an incentive fee of twenty percent (20%) of any monthly net profit. Although Allen issued prospective clients the "Investment Management Agreements", Allen failed to deliver to prospective clients or actual

clients any disclosure document containing the information set forth in Commission Regulations 4.34 and 4.35.

#### D. LEGAL DISCUSSION

1. Violations of Section 4m(1) of the Act: Failure to Register as a Commodity Trading Advisor

Section 1a(6) of the Act defines a CTA, in part, as a person who advises another about the value or advisability of trading in commodity futures contracts or commodity option contracts, directly or through publications, writings or electronic media, for compensation or profit. *See* 7 U.S.C. § 1a(6). Allen acted as a CTA because he directed the trading<sup>2</sup> in clients' futures accounts pursuant to powers of attorney for compensation or profit.

Allen was required to be registered as a CTA. Section 4m(1) makes it unlawful for a CTA, unless registered

to make use of the mails or instrumentalities of interstate commerce in connection with his business as [a CTA] . . . .: *Provided*, That the provisions of this section shall not apply to any commodity trading advisor who, during the course of the preceding twelve months, has not furnished commodity trading advice to more than fifteen persons and who does not hold himself out generally to the public as a commodity trading advisor

7 U.S.C. § 6m. Allen, while acting as a CTA, Allen directed the trading of his clients' accounts by telephone or through the Internet, both means of interstate commerce. Allen also held himself out to the public as a CTA. Allen told potential purchasers of a trading system that produced market support and resistance indicators that he could personally interpret these indicators on their behalf and trade for the prospective client. Allen, therefore, solicited prospective clients from the general public. Unless a CTA restricts his clients to family, friends, and existing business associates, he is viewed as holding himself out to the public as a CTA. *CFTC Interpretive Letter No. 97-26*, supra, at ¶ 27,026.<sup>3</sup>

Although Section 4m(1) seems to be drafted rather broadly, various regulations narrow its apparent reach. Specifically, Regulation 4.14(a)(9) exempts from registration any CTA that does not (i) direct client accounts, or (ii) provide commodity trading advice based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of

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<sup>2</sup> In the context of trading commodity interest accounts, the Commission defines "direct" to mean "an agreement whereby a person is authorized to cause transactions to be effected for a client's commodity interest account without the client's specific authorization." 17 C.F.R. § 4.10(f) (2003).

<sup>3</sup> It is unnecessary to determine whether a CTA advised more than 15 people within the preceding 12 months if he held himself out to the public as a CTA. *See In re Armstrong*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,657 at 40,150 (CFTC Feb. 8 1993).

particular clients. 17 C.F.R. § 4.14(a)(9) (2002). Because Allen directed the trading in client accounts he was required to be registered as a CTA. Accordingly, Allen violated Section 4m(1) of the Act.

2. Violations of Commission Regulation 4.31: Failure to Deliver Disclosure Document to Prospective Clients

Allen, a CTA required to be registered under the Act, solicited prospective clients and offered to enter into agreements to direct the trading in the clients' commodity interest accounts without delivering to the prospective clients a Disclosure Document containing the information set forth in Commission Regulations 4.34 and 4.35. Commission Regulation 4.31(a) requires CTA's registered or required to be registered under the Act to deliver or cause to be delivered to a prospective client,

a Disclosure Document containing the information set forth in 4.34 and 4.35 for the trading program pursuant to which the trading advisor seeks to direct the client's commodity interest account or to guide the client's commodity interest trading by means of a systemic program that recommends specific transactions by no later than the time the trading advisor delivers to the prospective client an advisory agreement to direct or guide the client's account...

17 C.F.R. § 4.31(a). Commission Regulation 4.31(b) prohibits a CTA from entering into an agreement to direct a client's account unless the CTA has received a signed acknowledgement from the client that states that the client has "received a Disclosure Document for the trading program pursuant to which the trading advisor will direct his account..." 17 C.F.R. § 4.31(b).

Allen, while acting as a CTA, solicited clients to grant powers of attorney permitting him to trade on their behalf. Eight clients, six on whose behalf he actually traded, granted Allen power of attorney. Allen did not provide any of these clients with the mandatory Disclosure Document containing the disclosures set forth in Commission Regulations 4.34 and 4.35 and, therefore, also did not receive any signed acknowledgements of receipt. Consequently, Allen violated Commission Regulations 4.31(a) and (b).

IV.

**OFFER OF SETTLEMENT**

Allen has submitted an Offer in which he neither admits nor denies the findings in this Order. Subject to the foregoing, Allen acknowledges service of this Order and admits the jurisdiction of the Commission with respect to the matters set forth in the Order. He waives: (1) Notice of Hearing and filing of a Complaint (2) a hearing and 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) all claims which he 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. 962-63, and Part 148 of the Regulations, 17 C.F.R. §§ 148.1, *et seq.*, relating

to or arising from this action; and (6) 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.

Allen stipulates that the record basis on which this Order is entered consists of the Order and the findings to which he has consented in the Offer, which are incorporated in this Order. Allen consents to the Commission's issuance of this Order, which makes findings as set forth herein, and orders that Allen:

1. cease and desist from violating the provisions of the Act and the Regulations that he has been found to have violated;
2. is permanently prohibited from trading on or subject to the rules of any registered entity, and all registered entities shall refuse Allen all privileges thereon from the date of this Order; and
3. comply with the undertakings as set forth in the Offer and incorporated in this Order.

**V.**

**FINDINGS OF VIOLATIONS**

Solely on the basis of the consent evidence in the Offer, and prior to any adjudication on the merits, the Commission finds that Allen violated Section 4m(1) of the Act, and Commission Regulations 4.31(a) and (b).

**VI.**

**ORDER**

Accordingly, IT IS HEREBY ORDERED THAT:

1. Allen shall cease and desist from violating Section 4m(1) of the Act, and Commission Regulations 4.31(a) and (b);
2. Allen is permanently prohibited from trading on or subject to the rules of any registered entity, and all registered entities shall refuse Allen all privileges thereon from the date of this Order; and
3. Allen shall comply with his undertakings as set forth in Section III of his offer as follows:

A. Registration with the Commission

Allen shall not: (i) apply for registration with the Commission or seek exemption from registration with the Commission in any capacity, and shall not engage in any activity requiring registration or exemption from registration, except as provided for in

Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9); (ii) act, directly or indirectly, as a principal, officer, director, agent or employee of any person registered, required to be registered or exempted from registration, unless such exemption is pursuant to Commission Regulation 4.14(a)(9); and (iii) act, directly or indirectly, in a supervisory capacity over any person employed by any person registered, required to be registered or exempted from registration, unless such exemption is pursuant to Commission Regulation 4.14(a)(9).

B. Public Statements

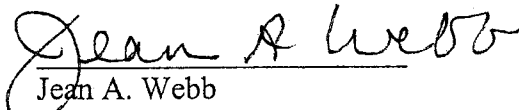
Allen agrees that neither he nor any of his agents or employees acting under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegations in the Complaint or findings in the Order or creating, or tending to create, the impression that the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

C. Cooperation

Allen agrees to cooperate fully with the Division by, among other things: 1) responding promptly, completely, and truthfully to any inquiries or requests for information; 2) providing authentication of documents; 3) testifying completely and truthfully; and 4) not asserting privileges under the Fifth Amendment of the United States Constitution.

Unless otherwise specified, the provisions of this Order shall be effective on this date. A copy of this Order shall be served on Allen at the address set forth in this Order, on all contract markets, and on the National Futures Association.

By the Commission.

  
Jean A. Webb  
Secretary to the Commodity Futures  
Trading Commission

Date: April 9, 2004