

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of

CFTC Docket No: 03-18

**Roy M. Sidewitz
and Qi2 Technologies, Inc.**

Respondents.

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ORDER MAKING FINDINGS AND IMPOSING SANCTIONS

I.

On June 30, 2003, the Commodity Futures Trading Commission ("Commission") filed a Complaint and Notice of Hearing ("Complaint") against Roy M. Sidewitz ("Sidewitz") and Qi2 Technologies, Inc. ("Qi2"). The Complaint charges that Sidewitz violated Sections 4o(1)(A) and (B) of the Commodity Exchange Act, as amended ("the Act"), 7 U.S.C. §§ 6o(1)(A) and (B) (2001), and Sections 4.41(a)(1) and (2), 4.41(b)(1) and (2) of the Commission's Regulations promulgated thereunder ("Regulations"), 17 C.F.R. §§ 4.41(a)(1)-(2), 4.41(b)(1)-(2) (2003). The Complaint also charges that Qi2 is liable for Sidewitz's violations of Sections 4o(1)(A) and (B) of the Act and Regulations 4.41(a)(1) and (2), 4.41(b)(1) and (2) of the Regulations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001).

II.

In order to dispose of the allegations and issues raised in the Complaint, Sidewitz and Qi2 have submitted a Joint Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the allegations of the Complaint or the findings herein, Sidewitz and Qi2 acknowledge service of this Order Making Findings and Imposing Remedial Sanctions ("Order"). Sidewitz and Qi2 consent to the use of the findings contained in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.¹

¹ Neither Sidewitz nor Qi2 consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, as the sole basis for any other proceeding brought by the Commission other than a proceeding brought to enforce the terms of this Order. Nor do Sidewitz or Qi2 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 late 1998 to January 2003 (the "relevant time period"), Sidewitz, an unregistered commodity trading advisor ("CTA"), used misleading and false advertising to solicit members of the public in the conduct of an Internet-based commodity trading advisory business, Qi2.

During the relevant time period, through the www.cybrlink.com ("Cybrlink.com") website, Sidewitz offered and sold, *inter alia*, three items: (i) a trading book entitled "How I Double My Money Annually In The Market," which delineates a system for trading options on commodity futures; (ii) a commodity trading system called the Coefficient of Thrust Day Trading System for use in the commodity futures and options markets; and (iii) a subscription-based commodity options trading advisory service called the MasterTrader Program.

In his advertising on the Cybrlink.com website, Sidewitz falsely touted substantial profits from using the trading systems and commodity options trading advisory service, and mischaracterized the performance records of the systems and advisory service as being based on actual trades, when they were actually based on simulated or hypothetical trades. Further, Sidewitz failed to provide the required disclosure concerning the inherent limitations of hypothetical or simulated trading.

By making such material misrepresentations about his trading, Sidewitz violated Sections 40(1)(A) and (B) of the Act and Commission Regulations 4.41(a)(1) and (2). Sidewitz's failure to provide the required disclosure concerning hypothetical trades violated Commission Regulations 4.41(b)(1) and (2). Qi2 is liable for Sidewitz's violations of Sections 40(1)(A) and (B) of the Act and Commission Regulations 4.41(a)(1) and (2), 4.41(b)(1) and (2) pursuant to Section 2(a)(1)(B) of the Act.

B. SETTLING RESPONDENTS

Roy M. Sidewitz, resides in Boulder, Colorado. He is the author of the "How I Double My Money Annually In The Market" trading book, and the developer of the Coefficient of Thrust Day Trading System and the MasterTrader Program. He is the sole owner, shareholder and employee of Qi2, which was previously known as The Cybrlink Group, Inc. Since December 1994, he or his company has owned and controlled the [Cybrlink.com](http://www.cybrlink.com) website. Sidewitz has never been registered with the Commission in any capacity.

Qi2 Technologies, Inc. is a Delaware corporation located at 4800 Baseline Road, #E104-370, Boulder, CO 80303. Qi2 has never been registered with the Commission in any capacity. Qi2 was incorporated as The Cybrlink Group Inc. in April 1995 and changed its name to Qi2 in May 1999.

C. FACTS

1. Products and Services Sold through the Internet

From at least late 1998 through January 2003, Sidewitz marketed and sold the “How I Double My Money Annually In The Market” trading book, and the commodity options trading system contained therein, through the Cybrlink.com website to the public at a cost of \$69.95 per hardback copy. The trading system articulates a methodology for trading commodity option credit spreads on the S&P 500 futures contract.

Sidewitz also developed a trading system called the Coefficient of Thrust Day Trading System (“COTD”) for use in the commodity futures and options markets. From approximately March 2000 through October 2002, Sidewitz/Qi2 sold the COTD trading system to the public, charging fees ranging from \$995 to \$1,695.

In late 1999, Sidewitz began to develop the MasterTrader Program (“MasterTrader”), a subscription-based commodity options trading advisory service. Using analysis of various commodities’ past seasonal price fluctuations that he purchased from an unrelated company, Sidewitz derived option credit spread recommendations on a variety of commodity futures contracts that he then sent to subscribers via electronic-message on the Internet. From at least early 2000 through December 2000, Sidewitz sold the MasterTrader commodity options trading advisory service to the public, charging a fee of \$125 per month for a two-month subscription.

2. Sidewitz and Qi2’s Misrepresentations

i. “How I Double My Money Annually In The Market” Commodity Trading Book

From at least late 1998 through January 2003, Sidewitz made intentional and material misrepresentations and omissions of facts to clients and potential clients regarding the “How I Double My Money Annually In The Market” trading book. In promotional statements on the Cybrlink.com website, Sidewitz claimed that in trading according to the trading system contained in the “How I Double My Money Annually In The Market” trading book, which was described as an “Industrial Strength Strategy,” Sidewitz had achieved a return “in the worst year [of] 140% and in the best year? [*sic*] My Money Grew By Over 300%.” Additional references are made on the website to the trading system which assert that “You don’t need to have an opinion on the direction of the market. It can go up; it can go down. It doesn’t matter to you,” and that “A truly effective strategy like the one I’m going to share with you makes money in bull markets, bear markets, and even in trendless, dull markets.”

The Cybrlink.com website claimed that “the book “How I Double My Money Annually In The Market” provides you [*sic*] the system you need to secure a yearly return on your investment that can go up to 300% percent.” Similarly, on a webpage that purported to illustrate Sidewitz’s “Performance” in trading according to the trading system in the “How I Double My Money Annually In The Market” trading book, the website declared that “In 1999, we have been

100% accurate year-to-date. In each timeframe below, you can see the degree of success in our investment performance has also been considerable.” In the table, Sidewitz claimed to have been accurate “91.7% of the time,” “91.7% of the time,” “94.2% of the time” and “93.5% of the time” for the period of “One Year,” “Five Years,” “Ten Years” and “Lifetime,” respectively. However, the Cybrlink.com website failed to disclose that the performance results were based upon hypothetical or simulated trading.

ii. Coefficient of Thrust Day Trading System

From approximately March 2000 through October 2002, Sidewitz also made intentional and material misrepresentations and omissions of facts to clients and potential clients regarding the COTD commodity futures and options trading system. On the website, Sidewitz stated, “Our personal trading interest resides in the S&P 500 futures” and, in a table set out immediately below, claimed that the COTD trading system’s “track record (points only)” from January 1996 to September 2002 was a “Grand Total [of] 3242.50” points. On the same webpage, Sidewitz claimed that the COTD trading system had a “High Win% - Wins exceed 50% of all trades with low drawdowns and enjoys returns that are many times the margin requirement.” Yet, Sidewitz never in fact achieved the advertised results through actual trading, and the Cybrlink.com website failed to disclose that the performance results were based upon hypothetical or simulated trading.

iii. MasterTrader Program Subscription Service

Sidewitz again made intentional and material misrepresentations and omissions of facts to clients and potential clients, from at least early 2000 to December 2000, concerning the MasterTrader commodity options trading advisory service. In advertisements on the Cybrlink.com website, Sidewitz asserted that his “winning approach” provided “the kind of edge that’s allowed me to have years in which all my trades, 100% of them, were winners.” The same webpage also claimed that “All recommendations have been painstakingly researched and have at least a 90% or better likelihood of making you serious money.” “Best of all,” the webpage asserted, “the investment returns on these positions is almost always at least 20% within the timeframe of a month or less.”

Contrary to the representations on the Cybrlink.com website during the relevant period, Sidewitz never achieved the returns indicated by trading in commodity futures and options according to the trading systems and the methodology upon which the commodity options trading advisory service was allegedly based. In fact, Sidewitz’s representations on the Cybrlink.com website were based solely upon returns generated through hypothetical or simulated back testing of trading systems and the methodology upon which the commodity options trading advisory service was based.

Throughout the relevant time period, Sidewitz acted as the agent of Qi2.

D. LEGAL DISCUSSION

1. Sidewitz and Qi2 Committed Solicitation Fraud in Violation of Sections 4o(1)(A) and (B) of the Act and Regulations 4.41(a)(1) and (2)

Sidewitz, while acting as a CTA, violated Sections 4o(1)(A) and (B)² of the Act and Commission Regulations 4.41(a)(1) and (2)³ by falsely representing to clients and prospective clients in written statements on the Cybrlink.com website that he had achieved net profits by trading commodity futures and options according to the trading system delineated in the “How I Double My Money Annually In The Market” trading book and the COTD trading system, as well as according to the methodology upon which the MasterTrader commodity options trading advisory service was based. Sidewitz also violated these provisions by representing hypothetical or simulated trades as actual trades and by misrepresenting the risks associated with his trading method.

To violate Section 4o(1) of the Act, Sidewitz must have acted as a CTA. 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). Sidewitz acted as a CTA because he gave commodity futures and options trading advice for compensation or profit through the sale of the trading system delineated in the “How I Double My Money Annually In The Market” trading book and the COTD trading system, which provide their users with specific buy and sell recommendations for commodity futures and options contracts, and through the subscription-based MasterTrader commodity options trading advisory service.

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

It shall be unlawful for a [CTA] . . . by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly (A) to employ any device, scheme or artifice to defraud any client . . . or prospective client . . . or (B) to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client . . . or prospective client.

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

No . . . commodity trading advisor, or any principal thereof, may advertise in a manner which (1) [e]mploys any device, scheme or artifice to defraud any . . . client or prospective client; or (2) [i]nvolves any transaction, practice or course of business which operates as a fraud or deceit upon any . . . client or any prospective . . . client.

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, Ltd. v. CFTC*, 205 F.3d 165, 170 (5th Cir. 2000) (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 104, 115-16 (S.D.N.Y. 1998), *aff'd in part and remanded in part on other grounds sub nom. Vartuli v. CFTC*, 228 F.3d 94 (2d Cir. 2000). 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. 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). Sidewitz acted with scienter because he knew that his trading had not made net profits when he represented to clients and prospective clients on the Cybrlink.com website that he was making profits by trading according to the trading systems and the methodology upon which the commodity options trading advisory service was based.

Sidewitz therefore violated Sections 4o(1)(A) and (B) of the Act and Commission Regulation 4.41(a)(1) and (2) by representing on the Cybrlink.com website that he was earning futures and options profits by trading according to the trading system described in the "How I Double My Money Annually In The Market" trading book and the COTD commodity trading system, as well as according to the methodology upon which the MasterTrader commodity options trading advisory service was based. Sidewitz made these misrepresentations notwithstanding the fact that he had not achieved the level of profits advertised by utilizing either of the trading systems, or by utilizing the methodology upon which the commodity options trading advisory service was based. *See CFTC v. Commonwealth Financial Group, Inc.*, 874 F. Supp. 1345, 1353-54 (S.D. Fla. 1994), *citing, inter alia, Reed v. Sage Group*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,942 at 34,299 (CFTC Oct. 14, 1987) (misrepresentations regarding a firm or broker's trading record and experience are fraudulent because past success and experience are material facts to reasonable investors); *R & W Technical Services, Ltd.*, ¶27,582 at 47,742 ("The use of a trading system by its developers is important to reasonable consumers because it reflects a meaningful vote of self-confidence and a sign of

authenticity"). A reasonable client would think it material that the trading program at issue had never been tested through actual trading. *Levine v. Refco, Inc.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24, 488 at 36,115 (CFTC July 11, 1989); *see also CFTC v. Skorupskas*, 605 F. Supp. 923, 933 (E.D. Mich. 1985) (misrepresenting performance tables as being actual trading results violated Section 4o of the Act).

Sidewitz also violated Sections 4o(1)(A) and (B) of the Act and Commission Regulations 4.41(b)(1) and (2) by misrepresenting hypothetical or simulated trades as actual profitable trades made by trading according to the trading system described in the "How I Double My Money Annually In The Market" trading book and the COTD commodity trading system, as well as according to the methodology upon which the MasterTrader commodity options trading advisory service was based. *R&W Technical Svcs., Inc. v. CFTC*, 205 F.3d at 170 ("Because simulated results inherently overstate the reliability and validity of an investment method, and because extravagant claims understate the inherent risks in commodities trading, a reasonable investor would find [such] fraudulent misrepresentations to be material."); *See also Skorupskas*, 605 F. Supp. at 933 (misrepresenting performance tables as being actual trading results violates anti-fraud provisions of the Act.)

Qi2 is liable for Sidewitz's violations of Sections 4o(1)(A) and (B) of the Act and Commission Regulations 4.41(a)(1) and (2) because a corporation is vicariously liable for the conduct of its officers and agents. *See* 7 U.S.C. § 2(a)(1)(B).

2. Sidewitz and Qi2 Failed to Provide Required Hypothetical Disclaimer in Violation of Regulations 4.41(b)(1) and (2)

Pursuant to Commission Regulation 4.41(b)(1), no person may present the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest or a series of transactions in a commodity interest . . . unless such performance is accompanied by:

(i) The following statement: 'Hypothetical or simulated performance results have certain inherent limitations. Unlike an actual performance record, simulated results do not represent actual trading. Also, since the trades have not actually been executed, the results may have under- or over-compensated for the impact, if any, of certain market factors, such as lack of liquidity. Simulated trading programs in general are also subject to the fact that they are designed with the benefit of hindsight. No representation is being made that any account will or is likely to achieve the profits or losses similar to those shown;' or

(ii) A statement prescribed pursuant to rules promulgated by a registered futures association . . .

Commission Regulation 4.41(b)(2) requires that:

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

Sidewitz failed to provide the disclosure orally or in written form on the Cybrlink.com website during the requisite period in violation of Commission Regulation 4.41(b)(1) and (2). Qi2 is liable for Sidewitz's violations of Commission Regulations 4.41(b)(1) and (2) pursuant to Section 2(a)(1)(B) of the Act.

IV.

OFFER OF SETTLEMENT

Sidewitz and Qi2 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 Complaint and 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 and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63, and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2001) relating to, or arising from this action.

Sidewitz and Qi2 stipulate that the record basis on which this Order is entered consists solely of the Order and the findings consented to in the Offer which are incorporated in this Order. Sidewitz and Qi2 consent to the Commission's issuance of this Order, which makes findings, as set forth above, and orders that Sidewitz and Qi2 cease and desist from violating the provisions of the Act and Regulations they have been found to have violated; that requires Sidewitz and Qi2 pay a civil monetary penalty of \$25,000; and that Sidewitz and Qi2 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 Sidewitz violated Sections 40(1)(A) and (B) of the Act, 7 U.S.C. §§ 60(1)(A) and (B) (2001), and Sections 4.41(a)(1) and (2), 4.41(b)(1) and (2) of the Commission's Regulations, 17 C.F.R. §§ 4.41(a)(1)-(2), 4.41(b)(1)-(2) (2003). Qi2 is vicariously liable for Sidewitz's violations of Sections 40(1)(A) and (B) of the Act and Sections 4.41(a)(1) and (2), 4.41(b)(1) and (2) of the Commission's Regulations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001).

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

1. Sidewitz and Qi2 cease and desist from violating Sections 40(1)(A) and (B) of the Act, 7 U.S.C. §§ 60(1)(A) and (B) (2001), and Sections 4.41(a)(1) and (2), 4.41(b)(1) and (2) of the Commission's Regulations, 17 C.F.R. §§ 4.41(a)(1)-(2), 4.41(b)(1)-(2) (2003);
2. Sidewitz and Qi2 pay a civil monetary penalty in the amount of twenty-five thousand dollars (\$25,000);⁴
3. Sidewitz and Qi2 shall comply with the following undertakings as set forth in their Offer:
 - A. neither Sidewitz nor Qi2 shall: (i) apply for registration 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. § 4.41(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); or (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. neither Sidewitz nor Qi2 shall 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.
 - C. neither Sidewitz nor Qi2 shall present the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest account or series of transactions in a commodity interest account

⁴ Sidewitz and Qi2 shall pay the total amount within ten days of the date of the Order; 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 Sidewitz and Qi2 as the payees and the name and docket of this proceeding. Sidewitz and Qi2 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 Sidewitz and Qi2 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 shows to the satisfaction of the Commission that payment of the full amount with interest thereon to the date of payment has been made.

unless such performance is accompanied by the following statement, as required by 17 C.F.R. § 4.41(b):

Hypothetical or simulated performance results have certain inherent limitations. Unlike an actual performance record, simulated results do not represent actual trading. Also, since the trades have not actually been executed, the results may have under- or over-compensated for the impact, if any, of certain market factors, such as lack of liquidity. Simulated trading programs in general are also subject to the fact that they are designed with the benefit of hindsight. No representation is being made that any account will or is likely to achieve profits or losses similar to those shown.

In doing so, Sidewitz and/or Qi2 shall clearly identify those hypothetical or simulated performance results which were based, in whole or in part, on hypothetical trading results.

- D. neither Sidewitz nor Qi2 shall 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.
- E. neither Sidewitz nor Qi2 shall represent, 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;
 - 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;

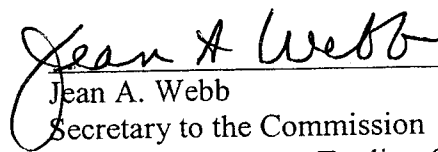
unless: (a) Sidewitz and/or Qi2 possesses and relies upon a reasonable basis substantiating the representation at the time it is made; and (b) for two (2) years after the last date of the dissemination of any such representation, Sidewitz and/or Qi2 maintain all advertisements and

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.

- F. **Public Statements.** By neither admitting nor denying the findings of fact or conclusions of law, Sidewitz and Qi2 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 Sidewitz and/or Qi2's (1) testimonial obligations, or (2) right to take legal positions in other proceedings to which the Commission is not a party. Sidewitz and Qi2 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: April 16, 2004