

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

_____ :
In the Matter of :
: :
: :
Gregory W. Elliott, :
individually and :
d/b/a SofTrade, Inc. and :
Sofradeinc.com, :
: :
: :
Respondent. :
_____ :

CFTC Docket No. 03-07

COMPLAINT AND NOTICE
OF HEARING PURSUANT TO
SECTIONS 6(c), 6(d) AND 8(a)
OF THE COMMODITY
EXCHANGE ACT, AS AMENDED

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I.

The Commodity Futures Trading Commission (“Commission”) has received information from its staff that tends to show, and the Commission’s Division of Enforcement (“Division”) alleges, that:

SUMMARY

1. From on or about March 2001 to September 2002 (the “relevant time period”), Gregory W. Elliott (“Elliott”), individually and d/b/a SofTrade, Inc. and www.softradeinc.com (“Softradeinc.com”), an unregistered commodity trading advisor (“CTA”), used misleading and fraudulent advertising to solicit customers to purchase a commodity futures trading system over the Internet. He fraudulently touted substantial profits from using his system and mischaracterized the performance record of the system as being based on actual trades, when it was actually based on simulated or hypothetical trades. Thus, Elliott violated Sections 4o(1)(A) and 4o(1)(B) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 6o(1)(A) and 6o(1)(B) (2000), and Commission Regulation 4.41(a)(1) and 4.41(a)(2), 17 C.F.R. § 4.41(a) (2001).

2. In his Internet advertising, Elliott also presented trading performance results, which were based on simulated or hypothetical data. Section 4.41(b)(1) of the Commission's Regulations, 17 C.F.R. § 4.41(b)(1) (2002), requires a prescribed statement of disclaimer or a statement prescribed pursuant to rules promulgated by a registered futures association, to accompany such statements of simulated performance results. Section 4.41(b)(2) of the Commission's Regulations, 17 C.F.R. § 4.41(b)(2) (2002), requires that the disclosure be prominently displayed if the presentation of the simulated or hypothetical performance is other than oral. Elliott violated Commission Regulations 4.41(b)(1) and 4.41(b)(2) by failing to include any prescribed statement of disclaimer with his advertising.

II.

PROPOSED RESPONDENT

3. **Gregory W. Elliott**, who currently resides in Chicago, Illinois, is self-employed and was registered with the Commission, first as an associated person ("AP") in January 1994 and, except for a brief period in April 1994, remained registered as an AP until December 1998, when he was suspended from associate membership of the National Futures Association ("NFA") for failing to pay an arbitration award. He was also registered with the Commission as a commodity trading advisor ("CTA") in January 1995 and as an introducing broker ("IB") in March 1995. He was registered intermittently as a CTA and an IB until January 1999. On April 26, 1999, Elliott was permanently barred from membership and associate membership of the NFA for mishandling client funds.

III.

FACTS

4. Elliott developed and marketed a commodity trading system for use in the futures markets through his company, SofTrade, Inc. ("SofTrade, Inc."). Since at least March of 2001,

Elliott has solicited customers to purchase his Internet based trading advisory system known as the QuantumLevel S&P E-mini S&P DayTrading System (“QuantumLevel”).

5. Elliott solicited customers from the public through advertisements on the Internet. These customers were enticed by representations of substantial profits into purchasing the QuantumLevel trading system, which provided definitive buy and sell recommendations for the S&P 500 E-mini futures contract.

6. From on or about March 2001 to September 2002, Elliott sold the system to the public, charging fees ranging from \$750 to \$1,750.

A. Misrepresentations And Misleading Advertisements Concerning Hypothetical Nature of Performance

7. Elliott placed advertisements on the Internet, through his website, www.softtradeinc.com, marketing his QuantumLevel trading system. These advertisements fraudulently misrepresented that the performance results he used in the advertisements were the results of actual trading, when they were, in fact, simulated or hypothetical results.

8. The description of Elliott’s trading system, the QuantumLevel trading system, conveyed a false impression to the public that Elliott was actually trading, when in fact he was not. For example, in his website advertisements, Elliott represented to the public the following:

- “That’s with REAL Money Trading!!!”
- “This system makes REAL Money no matter what the Stock Market does!!!.”
- “Click Here to request Actual Trade Records!”

9. Based on the misleading nature of the promotional advertising material, the public was fraudulently advised that the performance results represented Elliott’s actual trading, not simulated or hypothetical results.

B. Misrepresentations Concerning Profit Potential

10. Elliott used fraudulent and misleading statements in his web promotions. These statements overstated profit potential and failed to adequately warn investors of the risks inherent in futures trading. For example, on his website, Elliott advertised to the public:

- “Up over 200% so far in 2002.”
- A series of hyperlinks on the website home page, entitled “TradeStation Reports,” accessed trading analysis reports entitled, “TradeStation Strategy Performance Report/Performance Summary: All Trades” for specific S&P 500 E-mini contracts. In these reports, Elliott claimed to have made net trading profits of \$30,825.00, \$13,987.50 and \$23,812.50 (or returns on account of 106.66%, 40.54% and 61.97%) in trading of the S&P 500 E-mini contracts for March, June and September 2002, respectively. He also claimed to have made net trading profits of \$37,612.50, \$52,687.50, \$21,950.00 and \$27,487.50 (or returns on account of 132.97%, 186.17%, 80.74% and 100.83%) in trading of the S&P 500 E-mini contracts for March, June, September and December 2001, respectively.

11. Elliott also made fraudulent and misleading representations about the QuantumLevel trading system in electronic mail advertising messages that he sent to financial chat rooms and newsgroups on the Internet. For example, in an electronic mail message sent to the misc.invest.futures newsgroup at Google.com, which had a hyperlink to the Softradeinc.com website, Elliott, in discussing the QuantumLevel trading system stated:

- “up over 200% this year with Actual Trading” and “Averaging over \$10,000 per Month.”

12. In fact, Elliott never achieved such results through actual trading. On his Internet website, Elliott presented hypothetical or simulated performance results of his trading systems without the accompaniment of a required cautionary statement.

IV.

COUNT I

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

13. The allegations contained in paragraphs 1 through 12 above are realleged and incorporated herein by reference.

14. Since at least March 2001 to September 2002 (the “relevant period”), Elliott acted as a CTA because, for compensation or profit, he engaged in the business of advising others through the sale of the QuantumLevel commodity futures trading system which provided definitive buy and sell recommendations to users.

15. During the relevant time period, Elliott 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 or other means or instrumentalities of interstate commerce, he directly or indirectly employed a device, scheme or artifice to defraud customers or prospective customers, or engaged in a transaction, practice, or course of business which operated as a fraud or deceit upon such persons, including, but not limited to, using false and misleading advertisements, which overstated profit potential, represented hypothetical or simulated trading results as actual trading results and misrepresented Elliott’s trading record. Elliott engaged in these fraudulent acts, misrepresentations and omissions to convince others to purchase his trading system.

16. During the relevant time period, Elliott violated Commission Regulation 4.41(a), 17 C.F.R. § 4.41(a), in that he advertised in a manner which employed a device, scheme or artifice to defraud customers or prospective customers or involved any transaction, practice or course of business which operated as a fraud or deceit upon any such persons, including, but not limited to, the advertisements described in this Complaint.

17. Each material misrepresentation or omission, and each willful deception made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act and Regulation 4.41(a).

COUNT II

VIOLATION OF COMMISSION REGULATION 4.41(b)(1) and 4.41(b)(2): FRAUDULENT ADVERTISING

18. The allegations contained in paragraphs 1 through 12 above are realleged and incorporated herein by reference.

19. During the relevant time period, Elliott violated Commission Regulation 4.41(b)(1), 17 C.F.R. § 4.41(b)(1), in that he presented the performance of a simulated or hypothetical commodity interest account, transaction in a commodity interest or series of transactions in a commodity interest of a commodity trading advisor, without accompaniment of one of the following statements:

(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.

20. During the relevant time period, Elliott violated Commission Regulation 4.41(b)(2), 17 C.F.R. § 4.41(b)(2) (2002), in that he presented simulated performance results without accompanying those results with the prescribed precautionary statement prominently disclosed.

21. Each failure to include the above-mentioned statement of disclaimer made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.41(b)(1) and 4.41(b)(2).

V.

By reason of the foregoing allegations, the Commission deems it necessary and appropriate, pursuant to its responsibilities under the Act, to institute public administrative proceedings to determine whether the allegations set forth above are true and, if so, whether an appropriate order should be entered in accordance with Sections 6(c), 6(d) and 8a(4) of the Act, 7 U.S.C. §§ 9, 13b and 12a(4) (2001).

Sections 6(c) and 8a(4) of the Act allow the Commission to (1) prohibit respondents from trading on or subject to the rules of any registered entities, and require all registered entities to refuse such persons all privileges thereon for such period as may be specified in the Commission's Order, (2) if the respondent is registered with the Commission in any capacity, suspend, for a period not to exceed six months, or revoke, the registration of that respondent, (3) assess against a respondent a civil monetary penalty in an amount of not more than the higher of \$110,000 or triple the monetary gain to the Respondent for each violation of the Act or Regulations occurring between November 27, 1996 and October 23, 2000, and assessing against a Respondent a civil monetary penalty in an amount of not more than the higher of \$120,000 or triple the monetary gain to the Respondent for each violation of the Act or Regulations occurring after October 23, 2000.

Section 6(d) of the Act allows the Commission to enter an Order directing that the respondent cease and desist from violating the provisions of the Act and Regulations found to have been violated.

VI.

WHEREFORE, IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the allegations set forth in Section IV above be held before an Administrative Law Judge, in accordance with the Commission's Rules of Practice under the Act ("Rules"), 17 C.F.R. §§ 10.1 *et seq.* (2002), at a time and place to be set as provided by Section 10.61 of the Rules, 17 C.F.R. § 10.61, and that all post-hearing procedures shall be conducted pursuant to Sections 10.81 through 10.107 of the Rules, 17 C.F.R. §§ 10.81 through 10.107.

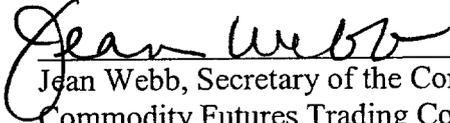
IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Complaint within twenty (20) days after service, pursuant to Section 10.23 of the Rules, 17 C.F.R. § 10.23, and pursuant to Section 10.12(a) of the Rules, 17 C.F.R. § 10.12(a), shall serve two copies of such Answer and of any documents filed in this proceeding upon Lisa Rosenthal, Supervisory Trial Attorney, and Grant Collins, Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC, 20581. If Respondent fails to file the required Answer or fails to appear at a hearing after being duly served, Respondent shall be deemed in default and the proceeding may be determined against Respondent upon consideration of the Complaint, the allegations of which shall be deemed to be true.

IT IS FURTHER ORDERED that this Complaint and Notice of Hearing shall be served upon the Respondent personally or by registered or certified mail, pursuant to Section 10.22 of the Rules, 17 C.F.R. § 10.22.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of the investigative or prosecutorial functions in this or any factually related proceeding will be permitted to participate or advise in the decision in this matter except as witness or counsel in a proceeding held pursuant to notice.

By the Commission.

Dated: January 21, 2003



Jean Webb, Secretary of the Commission
Commodity Futures Trading Commission