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15 Commodity Futures Trading Commission

16 **UNITED STATES DISTRICT COURT**
17 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

18 Commodity Futures Trading Commission,

19 Plaintiff,

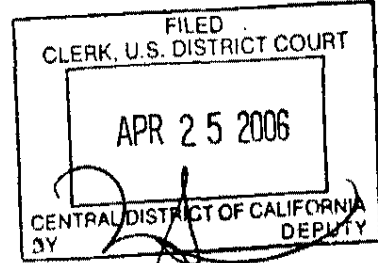
20 v.

21 Richard Swannell,

22 Defendant.

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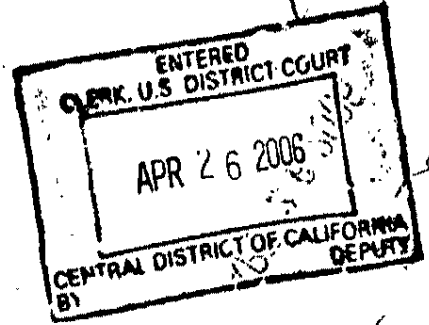
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

BY

Case No.: 03-2979
TJH(RZx)

CONSENT ORDER OF
PERMANENT
INJUNCTION AND
OTHER EQUITABLE
RELIEF AGAINST
DEFENDANT

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(G)



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1 Pursuant to the agreement of Defendant Richard Swannell ("Swannell") and
2 Plaintiff Commodity Futures Trading Commission ("the Commission")
3 (collectively referred to herein as "Parties"), the Parties hereby agree to entry of an
4 Order of Settlement, Permanent Injunction and Ancillary Relief ("Consent Order")
5 as follows:
6
7

8 **I. INTRODUCTION**

9 On April 29, 2003, Plaintiff Commodity Futures Trading Commission
10 ("Commission") filed the Complaint in this matter against the Defendant Richard
11 Swannell, alleging, *inter alia*, violations of the Commodity Exchange Act, as
12 amended ("Act"), 7 U.S.C. § 1 *et. seq.* (2002) and the Regulations promulgated
13 thereunder ("Regulations"), 17 C.F.R. § 1 *et. seq.* (2005). The Complaint sought
14 injunctive relief, monetary damages and civil monetary penalties, alleging in Count
15 One that Swannell violated the "Order Instituting Proceedings Pursuant to §§ 6(c)
16 and 6(d) of the Commodity Exchange Act, as Amended, Making Findings and
17 Imposing Sanctions" ("Commission Order") dated September 6, 2000 in *In the*
18 *Matter of International Trading Systems, Ltd., et al.*, [1999-2000 Transfer Binder],
19 Comm. Fut. L. Rep. (CCH) ¶28,238 at 50,467 (CFTC Sept. 6, 2000) and §6(c) of
20 the Act, 7 U.S.C. § 9, 15 (2002), and further alleging in Count Two that Swannell
21 violated Regulation 4.41(b)(2), 17 C.F.R. § 4.41(b) (2005) by failing to
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1 prominently display the disclaimer required by Regulation 4.41(b)(1), 17 C.F.R. §
2 4.41(b) (2005), while presenting hypothetical trading results.
3

4 The Defendant answered the Complaint, denying liability and asserting
5 various affirmative defenses.
6

7 **II. CONSENTS AND AGREEMENTS**

8 To effect settlement of the matters alleged in the Complaint without a trial on
9 the merits, Defendant Swannell:
10

11 1. Consents to the entry of this Consent Order of Permanent Injunction
12 and Other Equitable Relief ("Consent Order").
13

14 2. Affirms that he has read and agreed to this Consent Order voluntarily
15 and that no promise or threat has been made by the Commission or any member,
16 officer, agent or representative thereof, or by any other person, to induce consent to
17 this Order, other than as set forth specifically herein.
18

19 3. Acknowledges service of the Summons and Complaint.
20

21 4. Admits that this Court has jurisdiction over him and the subject matter
22 of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).
23

24 5. Admits that venue properly lies with this Court pursuant to Section 6c
25 of the Act, 7 U.S.C. § 13a-1 (2002).
26

27 6. Waives:
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1 a. The entry of findings of fact and conclusions of law pursuant to
2 Rule 52 of the Federal Rules of Civil Procedure, except as set forth below in Part
3 II;
4

5 b. All claims which may be available under the Equal Access to
6 Justice Act, 5 U.S.C. § 504 (2002) and 28 U.S.C. § 2412 (2002), to seek costs, fees
7 and other expenses relating to, or arising from, this action;
8

9 c. Any claim of Double Jeopardy based upon the institution of this
10 proceeding or the entry in this proceeding of any order imposing a civil monetary
11 penalty or any relief; and
12

13 d. All rights of appeal from this Consent Order.
14

15 7. By consenting to the entry of this Consent Order, Swannell neither
16 admits nor denies the allegations of the Complaint or the Findings of Fact
17 contained in this Consent Order, except as to jurisdiction and venue. However,
18 Swannell agrees and intends that the allegations of the Complaint and all of the
19 Findings of Fact made by this Court and contained in Part II of this Consent Order
20 shall be taken as true and correct and be given preclusive effect, without further
21 proof, in the course of any subsequent bankruptcy proceeding filed by, on behalf
22 of, or against Swannell. Swannell shall provide immediate notice of any
23 bankruptcy filed by, on behalf of, or against him in the manner required by Part IV
24 of this Consent Order. No provision of this Consent Order shall in any way limit
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1 or impair the ability of any person to seek any legal or equitable remedy against
2 Swannell or any other person in any other proceeding.

3
4 8. Swannell agrees that neither he nor any of his agents, servants,
5 employees, contractors or attorneys shall take any action or make any public
6 statement denying, directly or indirectly, any allegation in the Complaint or
7 findings or conclusions in the Consent Order or creating, or tending to create, the
8 impression that the Complaint or this Consent Order is without a factual basis;
9 provided, however, that nothing in this provision shall affect Swannell's (a)
10 testimonial obligations; or (b) right to take legal positions in other proceedings to
11 which the Commission is not a party. Swannell shall take all necessary steps to
12 ensure that all of his agents, servants, employees, contractors and attorneys
13 understand and comply with this agreement.
14
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18 9. Swannell consents to the continued jurisdiction of this Court in order
19 to implement and carry out the terms of all orders and decrees that may be entered
20 herein, to entertain any suitable application or motion for additional relief within
21 the jurisdiction of this Court, and to assure compliance with the Consent Order.
22

23 **II. FINDINGS AND CONCLUSIONS**

24
25 The Court, being fully advised in the premises, finds that there is good
26 cause for the entry of this Consent Order and that there is no just reason for delay.
27
28 The Court therefore directs the entry of findings of fact, conclusions of law, and a

1 permanent injunction and ancillary equitable relief pursuant to § 6c of the Act, 7
2 U.S.C. § 13a-1 (2002), as set forth herein.

3
4 **A. Procedural Background**

5 The Commission served Swannell with the Complaint on May 9, 2003, in
6 accordance with the requirements of Fed. R. Civ. P. 4(f)(2)(C)(i). Swannell filed a
7 *pro se* answer to the Complaint on May 30, 2003. Counsel for the defendant filed
8 a second answer to the Complaint on July 25, 2003.
9

10
11 On September 29, 2003, the Commission served Swannell with “First Set of
12 Interrogatories,” “Request for Admissions,” and “Request for Production of
13 Documents.” On January 20, 2004, the Commission filed a motion to compel
14 Swannell to provide full and complete answers to discovery.
15

16 On February 4, 2004, Magistrate Judge Zarefsky granted the Commission’s
17 motion and ordered Swannell to provide full and complete answers to the discovery
18 propounded by the Commission. Swannell thereafter propounded responses to the
19 discovery propounded by the Commission. On February 19, 2004, the Commission
20 took Swannell’s deposition in Los Angeles, California.
21

22 On June 30, 2004, Swannell’s first attorney moved to withdraw from
23 representation. On July 23, 2004, the Honorable Terry J. Hatter released Swannell’s
24 first attorney from further representation. Swannell subsequently obtained other legal
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1 representation and is currently represented by the California law firm of Gordon &
2 Rees, LLP.

3
4 **B. Findings of Fact**

5 **1. Parties**

6
7 Plaintiff Commodity Futures Trading Commission is an independent federal
8 regulatory agency charged with the responsibility for administering and enforcing
9 the provisions of the Act and Regulations promulgated under it.

10
11 Defendant Richard Swannell, an individual, currently resides in Mount
12 Pleasant, Australia. He has never been registered with the Commission in any
13 capacity.

14
15 **2. The Prior Commission Order in *In the Matter of: International***
16 ***Trading Systems, Ltd., et al.***

17 Swannell was previously the subject of an order issued by the Commission,
18 specifically: an "Order Instituting Proceedings Pursuant to §§ 6(c) and 6(d) of the
19 Commodity Exchange Act, as Amended, Making Findings and Imposing
20 Sanctions" ("Commission Order") dated September 6, 2000 in *In the Matter of*
21 *International Trading Systems, Ltd., et al.*, [1999-2000 Transfer Binder], Comm.
22 Fut. L. Rep. (CCH) ¶28,238 at 50,467 (CFTC Sept. 6, 2000). After the
23
24 Commission contacted Swannell in 2000 to discuss his activities, he agreed to
25
26 discontinue the activities at issue and to consent to the entry of the Commission
27
28 Order dated September 6, 2000, prohibiting further violations of §§ 4b(a)(i),

1 4b(a)(iii), and 4o(i) of the Act and §§4.41(a) & (b) of the Commission's
2 Regulations. The prior Commission Order remains in full force and effect.
3

4 In pertinent part, the prior Commission Order states:

5 C. [Swannell] shall comply with the following
6 undertakings:

- 7 2. [Swannell] shall not present the performance
8 of any simulated or hypothetical commodity
9 interest account, transaction in a commodity
10 interest or series of transactions in a
11 commodity interest unless such performance
12 is accompanied by the following statement, as
13 required by 17 C.F.R. § 4.41(b):

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

28 In doing so, [Swannell] shall clearly identify
those hypothetical or simulated performance
results which were based, in whole or in part,
on hypothetical trading results.

3. [Swannell] shall not make any representation
of financial benefits associated with any
commodity futures or options trading system

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1 or advisory service without first disclosing,
2 prominently and conspicuously, that futures
3 trading involves high risks with the potential
4 for substantial losses.

5 As described in more detail *infra*, on or about November 27, 2001, Swannell
6 registered a new website, *www.elliottwaveresearch.com*, and began a new business
7 selling trading software.

8
9 **3. Swannell's Activities After the Issuance of the September 6, 2000**
10 **Commission Order in *In the Matter of: International Trading***
11 ***Systems, Ltd., et al.***

12 In September 2002, the Commission became aware of Swannell's new
13 website, *www.elliottwaveresearch.com*, which touted the "Elliott Wave Analyzer,"
14 a software trading system. Defendant Richard Swannell is the registered owner of
15 the website's domain name.
16

17 After agreeing to the September 6, 2000 Commission Order with the
18 Commission, Swannell signed a licensing agreement with Roxburgh Securities
19 ("Roxburgh") in October, 2001. The agreement between Swannell and Roxburgh
20 was dissolved in the Summer of 2003. Under the agreement, Roxburgh was to be
21 paid between 7.5% and 15 % of the gross sales of the software trading systems.
22
23 Further, Roxburgh agreed to hire Swannell's associate, Travis Mijat, whose salary
24 and benefits would be paid out of Swannell's percentage of the sales.
25
26
27
28

1 When a customer requested more information about the Elliott Wave
2 Analyzer, they received an e-mail from Swannell and his company Elliott Wave
3 Research. Swannell also claimed to be Director of Research for
4 *www.elliottwaveresearch.com*. In addition, the website prominently featured
5 Swannell's personal story, his research and development of the Elliott Wave
6 Analyzer, and an offer to receive a free copy of his book "Elite Traders (sic)
7 Secrets."

8 The website offered a subscription service to traders which provided Elliott
9 Wave Forecasts, stating "[y]ou don't need to spend your valuable time learning to
10 use a new software forecasting system-we do all the work for you. We produce the
11 forecasts using the powerful Elliott Wave Analyzer, our expertise and many years
12 of experience."

13 The website included numerous claims and statements in support of the
14 software's success, including:

- 15 (a) *Software 84.9% accurate-Statistically Proven*
- 16 (b) *Many Thousands of traders depend on it every day
17 to help establish more profitable trades.*
- 18 (c) *Tells you when to buy, when to sell, when to exit,
19 and maybe even more importantly, when not to
20 trade!*
- 21 (d) *We have collected statistical evidence that proves
22 the Elliott Wave Analyzer 3 can accurately
23 forecast market movement.*

1
2 (e) *Just imagine: You are sitting in front of your*
3 *computer testing the results of the Elliott Wave*
4 *Analyzer 3. You notice that 84.9% of the*
5 *projections have come true when tracking the*
6 *accuracy of particular Elliott waves. This is not*
7 *the first time. These findings have remained*
8 *consistent while analyzing close to 5000 random*
9 *projections of 33 stocks of the S&P 100.*

10 (f) *How would your trading profits improve with these*
11 *results available at your fingertips?*

12 (g) *We confidently believe that the Elliott Wave*
13 *Analyzer 3 WILL be recognized as the world's*
14 *most accurate market forecasting tool for*
15 *analyzing stocks, indices, futures and commodities.*

16 While the website did provide a disclaimer regarding hypothetical
17 performance results, the disclaimer had to be accessed separately and the link to
18 the disclaimer first appears on page six of the website. The link is at the bottom of
19 the page, next to the copyright and separate from other links to the rest of the site.
20 The page claiming "Software 84.9% accurate-Statistically Proven" has no
21 disclaimer and no link to the disclaimer.
22

23 In January and February 2003, Swannell made numerous changes to both the
24 format and content of the *www.elliottwaveresearch.com* website. The disclaimer
25 regarding hypothetical trading results remained obscured. The website
26 prominently featured an invitation to attend "the first ever Elliott Trader's
27
28

1 Mastermind Alliance.” This event was to be hosted by Richard Swannell, and was
2 to have taken place in June of 2003, in Los Angeles, California.

3
4 The invitation included the following statements:

- 5 (a) *Our goal is to create the ultimate trader's*
6 *mastermind alliance-One that Rich Swannell will*
7 *lead and direct. . . . One that helps you identify*
8 *“screaming” opportunities that you're not taking*
9 *advantage of at all.*
- 10 (b) *Elliott Wave Research is the only company in the*
11 *world to statistically analyze and significantly*
12 *refine the Elliott Wave Principle-to forecast stocks*
13 *and commodities markets more accurately, and*
14 *give you the ability to take more money out of the*
15 *markets than ever before.*
- 16 (c) *The exact probability of a forecast being correct*
17 *can now be calculated accurately, which offers*
18 *traders, like you, a massive money making*
19 *advantage previously unseen.*
- 20 (d) *The total investment required to be involved is only*
21 *US \$5000...Bear in mind that direct access to our*
22 *database alone is worth more than a million*
23 *dollars a year.*

24 Transmittal of these, as well as other statements, individually and/or through
25 Roxburgh, triggered Swannell's obligation under the terms of the September 6,
26 2000 Commission Order to “first disclos[e], prominently and conspicuously, that
27 futures trading involves high risks with the potential for substantial losses.”
28 Swannell's website neither prominently nor conspicuously contained such a
disclosure. Rather, the only disclosure regarding the high risk of loss associated

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1 with trading commodity futures or options is located toward the very end of a
2 litany of rhetorical questions that must be accessed separately through a web link
3 that does not appear until after the appearance of several of these statements.

4
5 **C. CONCLUSIONS OF LAW**

6
7 The Defendant's activities as alleged in the Complaint were subject to the
8 jurisdiction of the Commission pursuant to the Commission Order of September 6,
9 2000, § 6(c) of the Act, 7 U.S.C. § 9, 15 (2002), and Commission Regulation
10 4.41(b), 17 C.F.R. § 4.41(b) (2005).

11
12 By reason of the aforementioned acts, Swannell violated the Commission
13 Order of September 6, 2000, § 6(c) of the Act, 7 U.S.C. § 9, 15 (2002), and
14 Commission Regulation 4.41(b), 17 C.F.R. § 4.41(b) (2005).

15
16 Section C(2) of the September 6, 2000, Commission Order states that
17 Swannell shall not present the performance of any simulated or hypothetical
18 commodity interest account, transaction in a commodity interest or series of
19 transactions in a commodity interest unless such performance is accompanied by a
20 disclaimer, as required by 17 C.F.R. § 4.41(b).¹ Commission Regulation 4.41(b), 7
21
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24
25 ¹ Commission Regulation §4.41(b) provides in pertinent part for the following disclaimer:
26 Hypothetical or simulated performance results have certain inherent limitations. Unlike an actual
27 performance record, simulated results do not represent actual trading. Also, since the trades have
28 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.

1 C.F.R. § 4.41(b) (2005) requires such a disclosure to be “prominently disclosed.”
2
3 The required disclaimer present on the September 2002 version of the
4 *www.elliottwaveresearch.com* website is not prominently disclosed, as it can only
5 be accessed through an obscure link on the site itself. Further, there is no
6
7 disclaimer or link to the disclaimer on the page that claims the Elliott Wave system
8 is “84.9% accurate-statistically proven,” in violation of the Commission Order of
9
10 September 6, 2000, § 6(c) of the Act, 7 U.S.C. § 9, 15 (2002), and Commission
11 Regulation § 4.41(b), 17 C.F.R. § 4.41(b) (2005).

12 The September 6, 2000 Commission Order also requires that in addition to
13
14 the disclaimer, Swannell must “clearly identify those hypothetical or simulated
15 performance results which were based, in whole or in part, on hypothetical
16
17 results.” No such data is provided on any of the various versions of Swannell’s
18
19 *www.elliottwaveresearch.com* website, in violation of the Commission Order of
20
21 September 6, 2000, § 6(c) of the Act, 7 U.S.C. § 9, 15 (2002), and Commission
22 Regulation § 4.41(b), 17 C.F.R. § 4.41(b) (2005).

23 The *www.elliottwaveresearch.com* website states: “For regulatory reasons
24
25 we cannot promise you specific, or even general profitability targets. However, we
26
27 can tell you that I proudly and confidently trade our corporate and private funds
28
using our Refined Elliott Wave pattern recognition technology. Our trading results
will soon be posted on our website.” No such results of any kind were posted on

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1 the website. On the most recent version of *www.elliottwaveresearch.com*, Swannell
2 states that “[w]e are also trading our personal and corporate funds using this
3 technology-with good success.” Again, there is no specific data to support this
4 statement. Swannell’s failure to provide the required supporting data and trading
5 results violated the Commission Order of September 6, 2000, § 6(c) of the Act, 7
6 U.S.C. § 9, 15 (2002), and Commission Regulation § 4.41(b), 17 C.F.R. § 4.41(b)
7 (2005).
8
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11 Section C(3) of the Commission’s Order states that Swannell “shall not
12 make any representation of financial benefits associated with any commodity
13 futures or options trading system or advisory service without first disclosing,
14 prominently and conspicuously, that futures trading involves high risks with the
15 potential for substantial losses.” The warning set forth in the website owned and
16 controlled by Swannell was not displayed “prominently and conspicuously” and
17 did not include the language required by the Commission Order that “futures
18 trading involves high risks with the potential for substantial losses.”
19
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21

22 In addition, the “invitation” to the “Mastermind Seminar” hosted by
23 Swannell failed to contain any warning regarding the risk involved with
24 commodity options or futures trading, in violation of the terms of the Commission
25 Order of September 6, 2000, § 6(c) of the Act, 7 U.S.C. § 9, 15 (2002), and
26 Commission Regulation § 4.41(b), 17 C.F.R. § 4.41(b) (2005).
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1 Section C(4) of the Commission's order states that Swannell "...shall not
2 misrepresent, expressly or by implication: the performance, profits or results
3 achieved by, or the results that can be achieved by, users, including him/herself, of
4 any commodity futures or options trading system or advisory service." All three
5 versions of *www.elliottwaveresearch.com* significantly misrepresent the
6 performance and profits that may be achieved by the Elliott wave system. The first
7 website contained the claim "Software 84.9% accurate-Statistically Proven."

8 Customer testimonials included:

- 9
- 10 • "I remember going short one afternoon and taking a \$10,000.00 profit in
11 about 2 hours. The best thing I like about The Elliott Wave Analyzer is its
12 projections for market direction and the wave counts;"
 - 13 • "Elliott Wave Analyzer has changed the way I invest. By finding securities
14 with high Elliott Wave scores, coupled with technical analysis, the number
15 of profitable trades I've made has more than doubled! Since purchasing the
16 Elliott Wave Analyzer II, I've become a more interested, focused and
17 successful trader! This has helped me select trades with higher probability
18 of profit."

19 Another version of the website included the following customer testimonial:

- 20
- 21 • "Absolutely outstanding. My only concern is that as more people become
22 familiar with the software, the option market as we know it today, may not
23 exist. A win rate of 3 out of 10 trades is probably a livable win rate for the
24 market. However, a win rate of 9 out of 10 trades could become intolerable
25 if enough players owned and used the software. When there is a sure thing,
26 there is no market...there cannot be all winners and no losers."
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1 These claims on the three versions of the website are in violation of the
2 Commission Order of September 6, 2000, § 6(c) of the Act, and Commission
3 Regulation 4.41(b), 17 C.F.R. § 4.41(b) (2005) in that they are misleading
4 statements of profitability that ignore the inherent risks of trading in commodity
5 options or futures.
6
7

8 Under the totality of the circumstances, there is a reasonable likelihood of
9 future violations of the Act, Regulations and Commission Order by Swannell.
10 Therefore, a permanent injunction should issue in this action.
11

12 There is good cause for entry of an order requiring Swannell to pay a civil
13 monetary penalty in the amount of \$140,000.00 as a result of his violations of the
14 Act and Commission Regulations.
15

16 **III. ORDER FOR PERMANENT INJUNCTION AND OTHER RELIEF**
17

18 Accordingly, **IT IS HEREBY ORDERED THAT:**

19 A. Defendant Richard Swannell and any person insofar as he or she is
20 acting in the capacity of officer, agent, servant, employer, and/or attorney of
21 Swannell, and any person insofar as he or she is acting in active concert or
22 participation with Swannell who receives actual notice of this Order by personal
23 service or otherwise, is permanently enjoined from directly or indirectly violating
24 §§ 4.41(b) of the Commission's Regulations, 17 C.F.R. §§ 4.41(b) (2005);
25
26
27
28

1 B. Defendant Swannell is permanently restrained, enjoined and
2 prohibited from directly or indirectly:
3

- 4 a. Soliciting, receiving, or accepting in the United States any
5 funds in connection with the purchase or sale of any commodity
6 futures contract or any option on a futures contract;
- 7 b. Controlling or directing the trading of any commodity futures
8 or commodity options account in the United States for or on
9 behalf of any person or entity, directly or indirectly, whether by
10 power of attorney or otherwise;
- 11 c. Applying for registration or claiming exemption from
12 registration with the Commission in any capacity, and engaging
13 in any activity requiring such registration or exemption from
14 registration, except as provided for in Commission Regulation
15 § 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2005), or acting as a
16 principal, agent, officer or employee of any person registered,
17 exempted from registration or required to be registered with the
18 Commission, unless such exemption is pursuant to Commission
19 Regulation § 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2005) ;
- 20 d. Trading on or subject to the rules of any registered entity, as
21 that term is defined in § 1a(29) of the Act, 7 U.S.C.
22 § 1a(29)(2002), and
- 23 e. violating the Commission Order of September 6, 2000 and §
24 6(c) of the Act, 7 U.S.C. § 9, 15 (2002).

25 C. Defendant Richard Swannell shall pay a civil monetary penalty of
26 \$140,000. He shall pay the total amount within twenty-one (21) days of the date
27 of this Order by electronic funds transfer, or by U.S. postal money order, certified
28 check, bank cashier's check, or bank money order, made payable to the Commodity
Futures Trading Commission, and sent to Dennese Posey, Futures Trading

1 Specialist, Division of Enforcement, Commodity Futures Trading Commission,
2 Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under
3 cover of a letter that identifies the name and docket number of the proceeding;
4 Swannell shall simultaneously transmit a copy of the cover letter and the form of
5 payment to Director, Division of Enforcement, Commodity Futures Trading
6 Commission, 1155 21st Street, N.W., Washington, D.C. 20581;
7
8

9 D. The injunctive provisions of this Consent Order shall be binding upon
10 Defendant Swannell, upon any person insofar as he or she is acting in the capacity
11 of officer, agent, servant or employee of Defendant Swannell, and upon any person
12 who receives actual notice of this Consent Order, by personal service or otherwise,
13 insofar as he or she is acting in active concert or participation with Defendant
14 Swannell.
15
16
17

18 **IV. MISCELLANEOUS PROVISIONS**

19 **ENTIRE AGREEMENT AND AMENDMENTS:** This Consent Order
20 incorporates all of the terms and conditions of the settlement among the parties
21 hereto. Nothing shall serve to amend or modify this Consent Order in any respect
22 whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3)
23 approved by order of this Court.
24
25

26 **PRIOR ORDER REMAINS IN FULL FORCE AND EFFECT:** The
27 Commission Order entered against Defendant Swannell in *In the Matter of*
28

1 *International Trading Systems, Ltd., et al.*, [1999-2000 Transfer Binder], Comm.
2 Fut. L. Rep. (CCH) ¶28,238 at 50,467 (CFTC Sept. 6, 2000) prohibiting further
3 violations of §§ 4b(a)(i), 4b(a)(iii) and 4o(i) of the Act, 7 U.S.C. §§ 4b and 4o
4 (2002) and §§ 4.41(a) & (b) of the Commission's Regulations, 17 C.F.R. § 4.41
5 (2005), remains in full force and affect.
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8 WAIVER: The failure of any party hereto at any time or times to require
9 performance of any provision hereof shall in no manner affect the right of such
10 party at a later time to enforce the same or any other provision of this Consent
11 Order. No waiver in one or more instances of the breach of any provision
12 contained in this Consent Order shall be deemed to be or construed as a further or
13 continuing waiver of such breach or waiver of the breach of any other provision of
14 this Consent Order.
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18 SUCCESSORS AND ASSIGNS: This Consent Order shall inure to the
19 benefit of and be binding upon the parties hereto and the successors, assigns, heirs,
20 beneficiaries and administrators of the parties hereto.
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22 ACKNOWLEDGEMENTS: Upon being served with copies of this Consent
23 Order after entry by the Court, Defendant Swannell shall sign acknowledgements
24 of such service and serve such acknowledgments on this Court and the
25 Commission within seven (7) calendar days of being served with copies of this
26 Consent Order.
27
28


1 NOTICES: All notices required by this Order shall be sent by certified mail,
2 return receipt requested, as follows:

3
4 1. Notice to Plaintiff Commission:
5 Director, Division of Enforcement
6 Commodity Futures Trading Commission
7 1155 21st St., N.W.
8 Washington, DC 20581

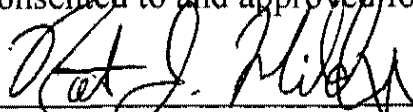
9 2. Notice to Defendant:
10 James M. Grady
11 Gordon & Rees, LLP
12 101 West Broadway, Suite 2000
13 San Diego, California 92101

14 INVALIDATION: If any provision of this Consent Order, or the application
15 of any provisions or circumstances is held invalid, the remainder of the Consent
16 Order and the application of the provision to any other person or circumstance
17 shall not be affected by the holding.

18 ENTERED THIS 25th of April, 2006.

19
20 
21 _____
22 Hon. Terry J. Hatter
23 United States District Court

24
25 Consented to and approved for entry by:

26 
27 _____
28 Robert J. Hildum, Attorney for the Plaintiff
U. S. Commodity Futures Trading Commission
1155 21st Street, NW

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1155 21st Street, NW
Washington, DC 20581
Phone (202) 418-5329
Fax (202) 418-5523
Email: rhildum@efsc.gov

Wern
Wern
Defendant Richard Swannell

James M. Grady
James M. Grady
Gordon & Rees, LLP
Attorney for Defendant Richard Swannell

SCANNED