

an Internet chat room where respondents provide "live" day trading advice during the day on when to buy and sell stocks. The "Daily Picks Newsletter," and the "Hot Small Caps Newsletter" are in the form of e-mails delivered once per day which contain advice for stock trading. Respondents advertise on their Internet Web site, [www.daytradingintl.com](http://www.daytradingintl.com). This matter concerns allegedly deceptive representations of the earnings and profit potential, as well as the extent of risk involved in using respondents' stock trading program.

The Commission's proposed complaint alleges that respondents made unsubstantiated claims that users of respondents' "Live Interactive Trading Room" program can reasonably expect to achieve profits on their trades more than 85 percent of the time and achieve substantial profits on a consistent basis (e.g., \$500 per trade, two or three times each day); and that users of respondents' "Daily Picks Newsletter" program can reasonably expect to make short term trades, held one to five days, that achieve a rate of return of between two percent and ten percent per trade.

In addition, the complaint alleges that respondents misrepresented that users of their trading programs can reasonably expect to trade stocks profitably with little or no risk. The complaint also alleges that respondents misrepresented that since January 1996, their "Daily Picks Newsletter" program has returned an average of 167 percent annually and that during 1996 and 1997, their "Hot Small Caps Newsletter" program returned an average annual return of 214 percent. The complaint explains that respondents did not begin to offer the "Daily Picks Newsletter" or "Hot Small Caps Newsletter" until 1998.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondents to have a reasonable basis substantiating any representation about the percentage, ratio, or number of trades that a user of any trading program could reasonably expect to be profitable; the amount of earnings, income, or profit that a user of any trading program could reasonably expect to attain; the rate of return that a user of any trading program could reasonably expect to

