

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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)	
U.S. COMMODITY FUTURES TRADING)	
COMMISSION,)	
)	
Plaintiff,)	CASE NO. <u>11-1419 (JAF)</u>
)	
v.)	
)	
ACJ CAPITAL, INC.)	FILED UNDER SEAL
)	
and)	
)	
ANGEL FERNANDO COLLAZO,)	
)	
Defendants.)	
)	
_____)	

**COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL MONETARY
PENALTIES, AND OTHER EQUITABLE RELIEF**

Plaintiff U.S. Commodity Futures Trading Commission ("Commission" or "CFTC")

alleges as follows:

I. SUMMARY

1. Since at least October 2007 through at least December 2008 (the "relevant period"), Defendant ACJ Capital, Inc. ("ACJ"), through its officers, agents and other persons acting on its behalf, including Defendant Angel Fernando Collazo ("Collazo"), fraudulently solicited at least \$1,700,000 from at least 18 individuals for the purported purpose of trading managed accounts managed by Defendant Collazo and in connection with agreements, contracts

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or transactions in off-exchange foreign currency (“forex” or “foreign currency”) that are margined or leveraged; misled customers about the performance of their accounts; and provided false account statements to customers.

2. In soliciting customers, Defendant Collazo, then a registered commodity trading advisor (“CTA”), falsely claimed that ACJ’s trading program was profitable. While luring prospective customers with claims of profits, Defendant Collazo minimized and failed to disclose fully the risks of trading leveraged foreign currency. Defendant Collazo created the false impression of a successful and experienced foreign currency firm.

3. Defendant Collazo instructed ACJ’s customers to open individual trading accounts with IKON Global Markets, Inc. (“IKON”), a futures commission merchant (“FCM”). The customers granted Collazo authority to trade their accounts.

4. Defendants’ trading on behalf of customers resulted in consistent losses.

5. Defendant Collazo told ACJ’s customers to focus only on the “ending balance” reflected on their online statements from IKON in order to determine the value of their accounts. However, the true status of the accounts was captured in the “liquidation value” entry on their account statements, which was the sum of their ending balance and their unrealized losses.

6. In at least the summer and fall of 2008, despite losses reflected in customer accounts or margin calls appearing on their account statements, Defendant Collazo provided oral assurances to customers that their investments were making money or encouraged them to invest more money to realize gains. Based on these assurances, at least two ACJ customers placed additional funds in their trading accounts.

7. When various ACJ customers later questioned the appearance of negative balances in their IKON account statements, Defendant Collazo lied to those ACJ customers,

telling them that the online IKON statements were inaccurate and that he had access to the accurate balances in their accounts.

8. In order to conceal the extent of losses in customer accounts, Defendant Collazo created and sent to customers false trading account statements reflecting positive ending balances.

9. By virtue of this conduct and the further conduct described herein, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation of anti-fraud provisions of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 1 *et seq.*, as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 ("CRA")), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008).¹

10. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2), the Commission brings this action to enjoin Defendants' unlawful acts and practices, and to compel Defendants to comply with the Act. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

¹ The June 2008 legislation reauthorizing the Commodity Futures trading Commission revised Section 4b of the Act, among other things. *See* Section 13102 of the CRA. The objective of the revision was to "clarify that the CEA gives the Commission the authority to bring fraud actions in off-exchange 'principal-to-principal' futures transactions," H.R. REP. NO. 110-627, at 981(2008)(Conf. Rep.). While the CRA did not change the Act's prohibition on misconduct such as that at issue here, it reorganized Section 4b so that similar misconduct occurring on or after June 18, 2008 would be in violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

11. Unless restrained and enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below.

II. JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2).

13. Section 6c(a) authorizes the Commission to seek injunctive relief in district court against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of the Act or any rule, regulation, or order thereunder. In addition, this section authorizes the Commission to bring a civil action in district court to enforce compliance with the Act and any rule, regulation or order thereunder.

14. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because Defendants are found, inhabit, reside and/or transact business in the District of Puerto Rico, and certain of the transactions, acts, practices, and courses of business alleged to have violated the Act occurred, are occurring, and/or are about to occur within this District.

III. PARTIES

15. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.*, as amended by the CRA, and the Commission Regulations

promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2010). The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

16. Defendant **ACJ Capital, Inc.** is a corporation registered in the Commonwealth of Puerto Rico (Register No. 176089). The offices of ACJ are located at Urbanizacion Roosevelt, Calle Juan Devilla #476, San Juan, Puerto Rico. As of August 10, 2007, ACJ was registered with the National Futures Association (“NFA”) as a CTA. ACJ was incorporated in the state of New Jersey. According to articles of incorporation filed in 2002, Collazo served as the registered agent and sole member of ACJ’s board of directors. On January 4, 2009, NFA withdrew ACJ’s CTA registration for failure to file a timely renewal. On February 3, 2010, the NFA permanently barred ACJ from NFA membership and from acting as a principal of an NFA member.

17. Defendant **Angel Fernando Collazo** is an individual residing in Salinas, Puerto Rico. He served as President of ACJ. Collazo was registered as an Associated Person (“AP”) of ACJ as of October 25, 2007. The NFA withdrew Collazo’s registration on January 4, 2009 in conjunction with its withdrawal of ACJ’s registration. On February 3, 2010, the NFA permanently barred Collazo from membership, associate membership and from acting as a principal of an NFA member. Since June 2010, Collazo has served as president of Solid View Capital LLC (“Solid View”), which, like ACJ, is registered to do business in Puerto Rico. According to its website, Solid View offers customers a semi-automated forex trading system.

IV. FACTS

Defendants’ Fraudulent Solicitation of Customers to Trade Forex

18. During the relevant period, Defendants, through Collazo, fraudulently solicited at least \$1,700,000 from at least 18 individuals for the purported purpose of trading managed

accounts managed by Defendant Collazo and in connection with agreements, contracts or transactions in off-exchange foreign currency that are margined or leveraged. Most of the ACJ customers were solicited prior to June 18, 2008, the effective date of the CRA, but based on those fraudulent solicitations, the ACJ customers maintained and allowed Collazo to trade their trading accounts post June 18, 2008. At least \$550,000 was invested by ACJ customers and at least four new accounts opened after June 18, 2008, the effective date of the CRA.

19. In his solicitations, Defendant Collazo represented that he would trade foreign currency on behalf of customers.

20. As part of his solicitation, Defendant Collazo provided at least some of his customers with documents purporting to show profitable trading through November 2007.

21. During introductory meetings, Defendant Collazo showed some of ACJ's customers information on his computer purporting to show profitable trades.

22. Defendant Collazo told ACJ's customers that he was an experienced, successful forex trader, when, in fact, he had an unsuccessful trading record.

23. In soliciting customers, Defendant Collazo minimized the risk of forex trading. Defendant Collazo also represented to customers that he would not trade all of the funds in their account and they could liquidate their accounts at any time.

24. Based on Defendant Collazo's representations, ACJ's customers opened individual forex trading accounts at IKON, deposited collectively approximately \$1,700,000 into the trading accounts, and granted ACJ power of attorney or the authority to trade their individual accounts on their behalf.

25. Defendants, through Collazo, knowingly or with reckless disregard of the truth made such material misrepresentations and omissions in order to induce customers to invest and trade with them.

Defendants Misled Customers About the Profitability of Their Accounts

26. Defendant Collazo explained that customers could check the status of their accounts by accessing on-line statements via the IKON website.

27. Defendant Collazo explained to ACJ's customers that they need only pay attention to the "ending balance" listed on their IKON account statements. However, the true status of the account was reflected in the "liquidation value" entry in their account, which was the sum of their ending balance and their unrealized losses.

28. Defendants' trading on behalf of customers resulted in consistent and overall trading losses.

29. Despite the consistent trading losses, Defendant Collazo assured ACJ's customers that their investments were performing well.

30. Based on those assurances, at least one ACJ customer placed additional funds in her trading account in or about July 2008.

31. When at least one ACJ customer expressed concern to Defendant Collazo about the negative numbers appearing on their IKON account statements, Defendant Collazo told her again to focus on the "ending balance" reflected on the IKON statements. However, the true status of the account was reflected in the "liquidation value" entry in their account, which was the sum of their ending balance and their unrealized losses.

32. When ACJ customers inquired of Defendant Collazo about margin calls reflected in their IKON statements, which evidenced a decline in the value of their investments, Defendant

Collazo told the customers that they would realize gains by placing additional money in their accounts.

33. Based on these representations, at least two ACJ customers placed additional funds in their trading accounts after June 2008.

34. Defendants, through Collazo, knowingly or with reckless disregard for the truth made such material misrepresentations and omissions concerning the value and profitability of customers' accounts.

Defendants Concealed Their Fraud By Making False Statements and Issuing False Trading Account Documents To Customers

35. In or about the fall of 2008, a number of ACJ customers noticed that their IKON account balances had declined substantially. Some accounts showed minimal or zero balances, others were negative.

36. When contacted by ACJ's customers, Defendant Collazo falsely stated that the balances reflected on the IKON account statements were inaccurate. Defendant Collazo falsely stated that the inaccuracies were due to a computer malfunction at IKON.

37. Contrary to Defendant Collazo's statements, at the time Collazo told ACJ's customers that IKON's computer system was malfunctioning, there were, in fact, no such difficulties with IKON's computer system. The online statements IKON provided to ACJ's customers were accurate.

38. Defendant Collazo assured ACJ's customers that he had access to their "true" account balances.

39. Thereafter, Defendant Collazo transmitted purportedly accurate account statements to various ACJ customers via electronic mail. These purported account statements resembled the on-line account statements available through the IKON website.

40. The purported account statements Defendant Collazo transmitted falsely showed positive ending balances. These positive balances did not match the balances reflected on the IKON online account statements.

41. Notwithstanding these discrepancies, Defendant Collazo told at least one ACJ customer that her funds remained in her trading account.

42. At least one ACJ customer contacted IKON directly to inquire about her on-line statements. She was assured by an IKON representative that her IKON statements were accurate and that IKON's computer platform was functioning properly.

43. During the relevant period, despite near complete losses in ACJ's customers' accounts, Defendants collected at least \$555,590 in commissions.

44. Collazo is the President and registered agent of ACJ. He has virtually complete authority over, and day-to-day control of ACJ and he does not report to anyone. Collazo is the sole member of the Board of Directors of ACJ and the sole principal listed with the NFA and sole AP registered with the Commission. Collazo solicited the customers, controlled the trading of their accounts, and answered their questions concerning the value of their accounts.

The Nature of the Transactions

45. Neither Defendants nor the purported counterparties to the forex transactions they conducted were financial institutions, registered brokers or dealers, insurance companies, financial holding companies, investment bank holding companies, or the associated persons of financial institutions, registered brokers or dealers, insurance companies, financial holding companies, or investment bank holding companies.

46. Some or all of Defendants' customers were not "eligible contract participants" as that term is defined in Section 1a(12)(A)(xi) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 1a(12)(A)(xi). An "eligible contract participant," as relevant here, is an individual

who has total assets in an amount in excess of (i) \$10 million or (ii) \$5 million and who enters into the transaction in order to manage risk.

47. The forex transactions Defendants purportedly conducted on behalf of their customers were entered into on a leveraged or margined basis. Accordingly, Defendants were required to provide only a percentage of the value of the forex contracts that they purchased. The forex transactions Defendants purportedly conducted neither resulted in the delivery of actual currency within two days nor created an enforceable obligation to deliver actual currency between a seller and a buyer that had the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these forex contracts purportedly remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an enforceable obligation to do so).

V. COUNT ONE:
Violations of the Commodity Exchange Act

**Violations of Sections 4b(a)(2)(A)-(C) of the Act,
as amended by the CRA
(Fraudulent Solicitation and False Statements)**

48. The allegations set forth in paragraphs 1 through 47 are realleged and incorporated herein by reference.

49. Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C), make it unlawful:

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g), that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market – (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; [or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard

to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person.

Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, apply to the foreign currency transactions, agreements or contracts offered by Defendants. Section 2(c)(2)(C)(iv) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iv).

50. As set forth above, since at least June 18, 2008 through at least December 2008, in or in connection with foreign currency contracts, made, or to be made, for or on behalf of, or with, other persons, ACJ through its agent Collazo, and Collazo, cheated or defrauded or attempted to cheat or defraud customers or prospective customers; willfully made or caused to be made false reports or statements to another person; willfully deceived or attempted to deceive customers or prospective customers by, among other things, knowingly (i) fraudulently soliciting customers and prospective customers by, among other false claims, falsely claiming profitable returns, and minimizing and failing to fully disclose the risks of trading leveraged foreign currency; (ii) misrepresenting the profitability of ACJ customers' trading accounts; and (iii) distributing statements to ACJ customers that contained false account values, all in violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

51. ACJ through its agent Collazo, and Collazo, engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

52. Collazo controlled ACJ, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, ACJ's conduct alleged in this Complaint. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Collazo is liable for ACJ's

violations of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

53. The foregoing acts, misrepresentations, omissions, and failures of Collazo occurred within the scope of his employment, office or agency with ACJ. Therefore, ACJ is liable for these acts, misrepresentations, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2010).

54. Each act of fraudulent solicitation, misrepresentation or omission of material facts and making or causing to be made a false report or statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and pursuant to its own equitable powers, enter:

a) An order finding that Defendants violated Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C);

b) An *ex parte* statutory restraining order and an order for preliminary injunction pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2006), restraining Defendants and all persons or entities insofar as they are acting in the capacity of Defendants' agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants, who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

(i) Destroying, mutilating, concealing, altering, or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape

records, or other property of Defendants, wherever located, including all such records concerning Defendants' business operations;

(ii) Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records, or other property of Defendants, wherever located, including all such records concerning Defendants' business operations; and

(iii) Withdrawing, transferring, removing, dissipating, concealing, or disposing of, in any manner, any funds, assets, or other property, wherever situated, including, but not limited to, all funds, personal property, money, or securities held in safes or safety deposit boxes, and all funds on deposit in any financial institution, bank, or savings and loan account, whether domestic or foreign, held by, under the control of, or in the name of Defendants;

(iv) Appointing a receiver, if necessary, to secure assets held by, under the control of, or in the name of Defendants;

c) Orders of preliminary and permanent injunction enjoining Defendants and all persons insofar as they are acting in the capacity of Defendants' agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants, including any successor thereof, who receive actual notice of such order by personal service or otherwise, from engaging directly or indirectly:

(i) in conduct in violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C); and

- (ii) trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006));
- (iii) entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2010)) (“commodity options”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for their own personal account or for any account in which they have a direct or indirect interest;
- (iv) having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;
- (v) controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, and/or forex contracts;
- (vi) soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;
- (vii) applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010);
- (viii) acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2010)), agent or any other officer or employee of any person registered,

exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010);

d) An order directing Defendants, as well as any successors to any Defendant, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices, which constitute violations of the Act, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

e) An order directing Defendants to make full restitution to every person or entity whose funds Defendants received or caused another person or entity to receive as a result of acts and practices that constituted violations of the Act, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

f) An order directing Defendants and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the customers whose funds were received by them as a result of the acts and practices, which constituted violations of the Act, as described herein;

g) An order directing Defendants to pay a civil monetary penalty for each violation of the Act described herein, plus post-judgment interest, in the amount of the higher of: \$140,000 for each violation of the Act committed on or after October 23, 2008, \$130,000 for each violation of the Act committed on or between October 23, 2004 and October 22, 2008; or triple the monetary gain to Defendants for each violation of the Act described herein, plus post-judgment interest;

h) An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

i) Such other and further relief as the Court deems necessary and appropriate under the circumstances.

Dated: May 4, 2011.



/s/ Jose M. Pizarro-Zayas
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Respectfully submitted,

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