

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY**

**COMMODITY FUTURES TRADING
COMMISSION,**

Plaintiff,

v.

**WILLIAM S. EVANS III, individually
and d/b/a TURNING POINT
INVESTMENTS**

Defendant,

FRANCES EVANS,

Relief Defendant.

Case No.:

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

The Commodity Futures Trading Commission (“CFTC” or “Commission”), an independent federal agency, by and through its attorneys hereby alleges as follows:

I. INTRODUCTION

1. Between at least September 2018 and the present (“Relevant Period”), Defendant William S. Evans III (“Evans”), individually and doing business as Turning Point Investments (“Turning Point”), has been fraudulently soliciting and accepting funds from the general public (“participants”) to trade commodity interests and has been misappropriating the funds. To date Defendant has accepted at least \$10 million.

2. Evans solicited participants and prospective participants with numerous misrepresentations, including: that their funds would be used to trade commodity futures, when

in fact the funds were misappropriated and used to pay participants in a Ponzi-like scheme or for Evans and his wife, Relief Defendant Frances Evans (“F. Evans”) (“collectively “the Evanses”); his fee structure; and the likelihood of profits and the risk of loss.

3. By engaging in this conduct and the conduct further described herein, Evans has engaged, is engaging, or is about to engage in violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1-26 (2018). Specifically, Evans has engaged, is engaging, or is about to engage in violations of Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (2018), which makes it unlawful to cheat or defraud or attempt to cheat or defraud another person or to willfully deceive or attempt to deceive another person in connection with commodity futures and Section 4o(1)(A) and (B), 7 U.S.C. § 6o(1)(A),(B) (2018), which makes it unlawful for any commodity pool operator (“CPO”) “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 participant or prospective client or participant” or (B) “to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.”.

4. Furthermore, by engaging in a business that is of the nature of a commodity pool and soliciting and accepting funds for the purpose of trading in commodity interests, Evans acted as a CPO without the benefit of registration with the CFTC, thereby escaping regulatory scrutiny into his activities and violating Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2018).

5. Unless immediately restrained and enjoined by this Court, Evans is likely to continue engaging in the acts and practices alleged in this Complaint, and funds he fraudulently obtained are likely to be misappropriated or otherwise dissipated. Accordingly, the CFTC brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), to enjoin Evans’ unlawful

acts and practices and to compel his compliance with the Act. The CFTC also seeks civil monetary penalties and remedial ancillary relief, including restitution to defrauded participants, disgorgement, pre- and post-judgment interest, and such other equitable relief as this Court may deem necessary. The Commission also requests that the Court order Relief Defendant F. Evans to disgorge funds she received from Defendant's illegal activities and in which she has no legitimate interest.

II. JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (2018) (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (2018) (providing that U.S. district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). In addition, Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2018), provides that U.S. district courts have jurisdiction to hear actions brought by the Commission for injunctive and other relief or to enforce compliance with the Act whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

7. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2018), because Evans transacted business in this District, at least some of the Evanses' bank accounts are maintained in this District, and certain of the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District, among other places.

III. PARTIES

8. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with administering and enforcing the Act and CFTC Regulations (“Regulations”), 17 C.F.R. pts. 1-190 (2019).

9. Defendant **William Evans III** resides in Harrodsburg, Kentucky. Evans has never been registered with the CFTC in any capacity.

10. **Turning Point Investments** is a business name that Evans has used at least since 2018, including in bank account opening documents. However, it does not appear that Evans formally incorporated Turning Point Investments or formed it as a limited liability company, its address is listed as 2333 Alexandria Drive, STE 4, Lexington KY 40504. Turning Point Investments has never been registered with the CFTC in any capacity.

11. Relief Defendant **Frances Evans** resides in Harrodsburg, Kentucky and is married to Evans. F. Evans has never been registered with the CFTC in any capacity.

IV. FACTUAL ALLEGATIONS

12. On June 6, 2018, the Evanses opened a business bank account at Bank A named “William Evans DBA Turning Point Investments” (“Turning Point Account”). The account was opened using Evans’ social security number. Both Evans and F. Evans are signers on the Turning Point Account.

13. Beginning at least in September 2018, Evans solicited participants to trade commodity futures contracts through him and his company Turning Point Investments.

14. During the Relevant Period, Evans accepted at least \$10 million from fifteen participants into the Turning Point Account.

Misrepresentations, Omissions and False Statements

15. In late 2019, Participant A met with Evans several times to discuss his investment company and strategy, and during those meetings Evans solicited Participant A to liquidate her retirement accounts to trade S&P futures with Evans. During these meetings, Evans promised Participant A double digit profits through trading, with a maximum risk of loss of 5-8%, and access to her funds on demand. In addition, Evans represented that he would take care of the tax liability associated with the premature distributions from her retirement accounts. Evans also told her that his fee was 2-3% of profits.

16. Based on these representations, Participant A decided to deposit \$1,000,000.00 of her retirement money with Evans.

17. On January 28, 2020, Participant A wrote two checks totaling \$1,000,000.00 from her account at Bank A for deposit into the Turning Point Account. Participant A's checks to Turning Point were funded by three separate IRA withdrawals: on January 16, 2020, Participant A closed two IRA accounts and transferred the resulting funds, \$41,550.26 and \$186,272.73, to her account at Bank A. On January 27, 2020, she closed a third IRA account and transferred another \$772,334.69 to her account at Bank A.

18. On February 2, 2020, Participant A signed a contract with Evans stating that Evans will trade Participant A's funds "through his S&P Futures Trading System, S&P Options Trading System and Russell 2000 Trading System." In fact, Evans did not use any of Participant A's funds for trading S&P futures for the benefit of Participant A.

19. On March 7, 2020, Participant A's husband met with Evans to discuss his wife's investment. During this meeting, Evans admitted that he is not licensed, but claimed that he is

not required to be because he only trades in S&P futures. In fact, Evans is required to register with the CFTC to solicit and accept funds to trade in a commodity pool.

20. Evans repeated to Participant A's husband that the risk of loss associated with his fund was a maximum of 5-8%. In fact, Turning Point participants' risk of loss far exceeded 5-8%, among other reasons because the Evanses were misappropriating participant funds.

21. Evans told Participant A and her husband that her investment would earn double digit profits, when in fact he knew he was misappropriating participants' funds and that what trading he had done had resulted in losses.

22. Participant A's husband inquired about the tax liability his wife incurred as a result of the premature distribution from her IRAs. Evans claimed that the profits he made from trading in February 2020 would have "covered" that liability. In fact, Evans' trading in February 2020 resulted in losses.

23. Evans failed to disclose to Participant A or her husband that he was misappropriating participant funds to his and his wife's personal accounts.

24. Evans made these misrepresentations, omissions and false statements to solicit Participant A to trade with him.

Misappropriation of Participant Funds

25. During the Relevant Period, Evans misappropriated participant funds, including participant funds that he used to pay other participants and for his own personal expenses.

26. During the Relevant Period, the general activity in the Turning Point Account is deposits are made by individuals for participation interests in Turning Point, with funds distributed to individuals pursuant to Defendant's Ponzi-like scheme or transferred to other bank and commodity trading accounts in Defendant's and Relief Defendant's names.

27. At least \$8,421,050 of participant funds deposited into and commingled in the Turning Point Account has been transferred to the Evanses' personal bank accounts at Bank A (the "Personal Accounts").

28. In or about February 19, 2020, Evans and/or F. Evans opened a commodity futures trading account in F. Evans name at FCM A.

29. Since February 19, 2020, Evans and/or F. Evans have transferred at least \$6,850,000 from the Personal Accounts to the account in F. Evans' name at FCM A.

30. The trading activity in the account at FCM A has primarily been of E-mini S&P 500 futures contracts and options on E-mini S&P 500 futures contracts, and that trading activity has resulted in losses.

31. In or about July 13, 2018, Evans opened a commodity futures trading account in his own name at FCM B.

32. During the Relevant Period, Evans and/or F. Evans transferred at least \$495,500 from the Personal Accounts to an account in Evans' name at FCM B.

33. The trading account at FCM B has not earned a profit, and in fact the account lost over \$200,000 trading primarily E-mini S&P 500 futures contracts and options on E-mini S&P 500 futures contracts during the Relevant Period.

34. Funds in the Personal Accounts have also been transferred to the Evanses' personal accounts at other financial institutions.

35. For example, a \$355,000.00 check payable to Bank B was drawn on the Personal Accounts to pay the Evanses' personal mortgage/credit line.

36. Also, checks drawn on the Personal Accounts were deposited in what appears to be a personal account for the Evanses at Bank C.

37. On May 1, 2020, Bank A contacted Evans to discuss the activity in the Turning Point Account. Bank A questioned Evans regarding activity in the Turning Point Account.

38. Since that discussion, Evans and/or F. Evans have transferred at least \$5,200,000 to F. Evans' account at FCM A, thus bringing the total in that account to approximately \$6,850,000.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

Violations of Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (2018): Fraud by Misrepresentations, Material Omission and Misappropriation

39. The allegations set forth in the preceding paragraphs are re-alleged and incorporated herein by reference.

40. 7 U.S.C. § 6b(a)(1)(A) and (C), in relevant part, makes 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 that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person: (A) to cheat or defraud or attempt to cheat or defraud such other person or (C) willfully to deceive or attempt to deceive such 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 such other person.

41. Evans violated 7 U.S.C. § 6b(a)(1)(A) and (C) during the Relevant Period by making misrepresentations and omissions of material fact to participants and prospective participants, including, among other things, misrepresenting the expected profits and risk of loss, and his fee structure; and failing to disclose that he was misappropriating participant funds for

personal benefit and that he used participant funds to pay other participants, in the manner of a Ponzi scheme, and that he was not registered with the CFTC as a CPO.

42. Evans also violated 7 U.S.C. § 6b(a)(1)(A) and (C) during the Relevant Period by misappropriating participant funds for personal benefit, including paying his personal mortgage and using participant funds to pay other participants, in the manner of a Ponzi scheme.

43. Each act of misrepresenting and omitting material information, including, but not limited to, those specifically alleged herein, and each act of misappropriation, constitutes a separate and distinct violation of 7 U.S.C. § 6b(a)(1)(A) and (C).

COUNT II

Violations of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2018): Failure to Register as a CPO

44. The allegations set forth in the preceding paragraphs are re-alleged and incorporated herein by reference.

45. Section 1a(10) of the Act, 7 U.S.C. § 1a(10) (2018), defines the term “commodity pool” to mean “any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests, including any—(i) commodity for future delivery, security futures product, or swap; (ii) agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i); (iii) commodity option authorized under section 4c; or (iv) leverage transaction authorized under section 19 [of the Act].”

46. 7 U.S.C. § 1a(11) defines a CPO as any person “engaged in a business that is of the nature of a commodity pool, investment trust, syndicate or similar form of enterprise and who, in connection therewith, solicits, accepts, or receives from others, funds, securities or property . . . for the purpose of trading in commodity interests.”

47. 7 U.S.C. § 6m(1) makes it unlawful for any CPO, unless registered with the CFTC, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO.

48. Proposed Defendant acted as a CPO by using pooled participant funds to trade commodity futures, including E-mini S&P 500 futures contracts and options on E-mini S&P 500 futures contracts, in the FCM A and FCM B accounts.

49. Evans violated 7 U.S.C. § 6m(1) by acting as a CPO without the benefit of registration with the Commission.

50. Each use by Evans of the mails or any means or instrumentality of interstate commerce in connection with his business as a CPO without being registered with the Commission, including, but not limited to, those specifically alleged herein, constitutes a separate and distinct violation of 7 U.S.C. § 6m(1).

COUNT III

Violations of Section 4o(1)(A)-(B), 7 U.S.C. § 6o(1)(A)-(B) (2018): Fraud by a CPO

51. The allegations set forth in the preceding paragraphs are re-alleged and incorporated herein by reference.

52. 7 U.S.C. § 6o(1)(A)-(B) makes it unlawful for any commodity pool operator or associated person of a commodity pool operator, “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 participant or prospective client or participant” or (B) “to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.”

53. Evans violated 7 U.S.C. § 6o(1)(A)-(B) during the Relevant Period by making misrepresentations and omissions of material fact to participants and prospective participants, including, among other things, misrepresenting the expected profits and risk of loss, and his fee structure; and failing to disclose that he was misappropriating participant funds for personal benefit and that he used participant funds to pay other participants, in the manner of a Ponzi scheme, and that he was not registered with the CFTC as a CPO.

54. Evans also violated 7 U.S.C. § 6o(1)(A)-(B) during the Relevant Period by misappropriating participant funds for personal benefit, including paying his personal mortgage and using participant funds to pay other participants, in the manner of a Ponzi scheme.

55. Each act of misrepresenting and omitting material information, including, but not limited to, those specifically alleged herein, and each act of misappropriation, constitutes a separate and distinct violation of 7 U.S.C. § 6o(1)(A)-(B).

COUNT IV

DISGORGEMENT OF FUNDS FROM RELIEF DEFENDANT

56. The allegations in the preceding paragraphs are re-alleged and incorporated herein by reference.

57. Because Relief Defendant F. Evans received funds from Defendant's illegal activities in which she has no legitimate interest, including but not limited to participant funds transferred to the Evanses' Personal Accounts at Bank A in which F. Evans has an interest, the \$6,850,000 that was transferred to the account in her name at FCM A, and accounts at other financial institutions in which F. Evans has an interest, she should be required disgorge all such funds, including any funds subsequently transferred to third parties.

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), and pursuant to its own equitable powers:

- A. Find that Evans violated Sections 4b(a)(1)(A) and (C), 4o(1)(A) and (B), and 4m(1) of the Act, 7 U.S.C. §§ 6b(a)(1)(A),(C), 6o(1)(A) - (B), 6m(1) (2018);
- B. Enter an order of permanent injunction enjoining Evans, and his affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons or entities in active concert with him, who receive actual notice of such order by personal service or otherwise, from directly or indirectly engaging in the conduct described above, in violation of 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6o(1)(A) - (B), 6m(1).
- C. Enter an order of permanent injunction enjoining Evans, and his affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons or entities in active concert with them, who receive actual notice of such order by personal service or otherwise, from directly or indirectly:
 - a. Trading on or subject to the rules of any registered entity (as that term is defined by Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2018));
 - b. Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2019)) for accounts held in the name of Evans or for accounts in which Evans has a direct or indirect interest;
 - c. Having any commodity interests traded on Evans’ behalf;
 - d. 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 interests;

- e. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
 - f. Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2019); and
 - g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2019)), agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with the CFTC, except as provided for in 17 C.F.R. § 4.14(a)(9).
- D. Enter an order directing Evans and F. Evans, as well as any third-party transferee and/or successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received, including, but not limited to, salaries, commissions, loans, fees, revenues, and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment and post-judgment interest;
- E. Enter an order requiring Evans, as well as any successors thereof, to make full restitution to every person who has sustained losses proximately caused by the violations described herein, including pre-judgment and post-judgment interest;
- F. Enter an order directing Evans, as well as 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, with, or among Evans and any of the

participants whose funds were received by Evans as a result of the acts and practices that constituted violations of the Act, as described herein;

- G. Enter an order directing Evans to pay a civil monetary penalty assessed by the Court, in an amount not to exceed the penalty prescribed by Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1) (2018), as adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, tit. VII, § 701, 129 Stat. 584, 599–600, see Regulation 143.8, 17 C.F.R. § 143.8 (2019), for each violation of the Act, as described herein;
- H. Enter an order requiring the Evans to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2413(a)(2) (2018); and
- I. Enter an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Dated: May 28, 2020

Respectfully submitted,

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