

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

FINANCIAL TREE dba FINANCIAL  
TREE TRUST; FINANCIAL SOLUTION  
GROUP dba FINANCIAL SOLUTION  
GROUP TRUST; NEW MONEY  
ADVISORS, LLC; THE LAW FIRM OF  
JOHN GLENN, P.C.; JOHN D. BLACK  
aka JOHN BARNES; CHRISTOPHER  
MANCUSO; JOSEPH TUFO; and JOHN  
P. GLENN,

Defendants;

SUISSE GROUP (USA) LLC; JMC  
INDUSTRIES LLC; LANDES CAPITAL  
MANAGEMENT, LLC; KINGDOM  
TRUST LLC; HERBERT CASWELL;  
ANNE MANCUSO; and TYLER  
MANCUSO,

Relief Defendants.

No. 2:20-cv-01184-TLN-AC

**ORDER GRANTING STATUTORY  
RESTRAINING ORDER AND OTHER  
EQUITABLE RELIEF**

Presently before the Court is Plaintiff Commodity Futures Trading Commission’s (“CFTC”) *ex parte* Motion for a Statutory Restraining Order and Other Equitable Relief (“SRO”) pursuant to Section 6c(a) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 13a-1(a) (2018),

1 and Federal Rule of Civil Procedure (“Rule”) 65, in which CFTC seeks an order freezing Assets,<sup>1</sup>  
2 allowing for the inspection of Records,<sup>2</sup> and permitting expedited discovery in advance of any  
3 hearing on the preliminary injunction. (ECF No. 3.) For the reasons set forth below, CFTC’s  
4 Motion is GRANTED.

5 **I. FACTUAL AND PROCEDURAL BACKGROUND<sup>3</sup>**

6 The CFTC is an independent federal regulatory agency charged by Congress with the  
7 administration and enforcement of the Commodity Exchange Act (“Act”) and Commission  
8 Regulations (“Regulations”). (ECF No. 3 at 16.) By way of the present Motion, CFTC asserts  
9 that, since January 2015, Defendants John D. Black (“Black”), Financial Tree (“Financial Tree”),  
10 Financial Solution Group (“Financial Solution”), New Money Advisors, LLC (“New Money”),  
11 Chris Mancuso (“Mancuso”), Joseph Tufo (“Tufo”), John Glenn (“Glenn”), and Glenn’s law  
12 firm, The Law Firm of John Glenn, P.C. (the “Glenn Law Firm”) (collectively,

13 ///

14 <sup>1</sup> As used throughout CFTC’s Motion and herein, “Assets” encompasses any legal or  
15 equitable interest in, right to, or claim to any real or personal property, whether individually or  
16 jointly, or directly or indirectly controlled, and wherever located, including but not limited to:  
17 chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or  
18 other deliveries, inventory, checks, notes, accounts (including, but not limited to, bank accounts  
19 and accounts at other financial institutions), credits, receivables, lines of credit, contracts  
20 (including spot, futures, options, or swaps contracts), insurance policies, retainers held by agents  
21 for the provision of professional or other services, and all funds, wherever located, whether in the  
22 United States or outside the United States.

23 <sup>2</sup> As used throughout CFTC’s Motion and herein, “Records” encompasses the terms  
24 “document” and “electronically stored information” (“ESI”) as those terms are used in Federal  
25 Rule of Civil Procedure 34(a). The term “Records” also refers to each and every such item in  
26 Defendants’ and Relief Defendants’ actual or constructive possession, including but not limited  
27 to: (i) all such items within the custody or control of any agents, employers, employees, or  
28 partners of the Defendants and Relief Defendants; and (ii) all items which Defendants and Relief  
29 Defendants have a legal or equitable right to obtain from another person. A draft or non-identical  
30 copy is a separate item within the meaning of the term. A Record also includes the file and folder  
31 tabs associated with each original and copy.

32 <sup>3</sup> Unless otherwise noted, the following facts are derived from CFTC’s brief and the  
33 supporting records and declarations of Elsie Robinson, an investigator for CFTC, and several  
34 individuals allegedly defrauded by Defendants. (ECF Nos. 1, 3.) A more detailed analysis of the  
35 evidentiary record appears in the discussion below. For ease of reference, the Court will refer to  
36 the ECF pagination for the parties’ attached exhibits.

1 “Defendants”) have engaged in a fraudulent scheme to solicit and misappropriate money  
2 deposited with Defendants in violation of the Act and Regulations. (ECF No. 3 at 12.)

3 Starting in April 2014, Black created three entities — Financial Tree, Financial Solution,  
4 and New Money — which are controlled solely by Black and in which Black is the only  
5 employee. (ECF No. 3 at 16, 21; ECF No. 3-11 at 4–5.) Defendants used these business entities  
6 exclusively to conduct the pooling operations that are the subject of this action. (ECF No. 3 at  
7 21; ECF No. 3-11 at 4–5, 22–23.)

8 In August 2014, Black (on behalf of Financial Tree) and Glenn (on behalf of Glenn Law  
9 Firm) executed a “Paymaster Agreement” providing that the Glenn Law Firm would accept funds  
10 from third parties and disburse such funds to Financial Tree in exchange for a fee. (ECF No. 3 at  
11 22; ECF No. 3-11 at 7–8; ECF No. 3-13 at 79–86.) There was no legitimate business reason for  
12 Pool Participants to wire funds to the Glenn Law Firm, and for the Glenn Law Firm to then wire  
13 funds to Financial Tree (less Glenn’s fee), as Pool Participants could have just as easily wired  
14 money directly to Financial Tree. (ECF No. 3 at 22; ECF No. 3-11 at 13–14, 17.) Rather, CFTC  
15 alleges Black engaged the Glenn Law Firm and Glenn used his position as an attorney and  
16 Managing Partner of the Glenn Law Firm to deceive prospective Pool Participants into believing  
17 the Black Pools were legitimate and safe. (ECF No. 3 at 22; ECF No. 3-8 at 2; *see also* ECF No.  
18 3-10 at 2 (Mancuso communicated that prospective client’s money would be safe because “you’re  
19 not paying us, you’re paying an attorney.”).)

20 From approximately June 15, 2015, to the present (the “Relevant Period”), Defendants  
21 fraudulently solicited over \$14.32 million from at least 53 U.S. residents and 38 non-U.S.  
22 residents (“Pool Participants”) to trade binary options and retail foreign currency (“forex”)  
23 contracts in two commodity pools — the Financial Tree Pool and the Financial Solution Group  
24 Pool (collectively, the “Black Pools”). (ECF No. 3 at 12, 22; ECF No. 3-11 at 15.) Pool  
25 Participants could participate by entering into joint venture agreements with Financial Solution or  
26 New Money. (ECF No. 3 at 21; ECF No. 3-7 at 1–15, 29–36; ECF No. 3-8 at 1–2, 11–15; ECF  
27 No. 3-9 at 1–2, 6–11; ECF No. 3-10 at 1–2, 5–10; ECF No. 3-11 at 11–12.) Through these  
28 agreements, Pool Participants did not send money directly to the Black Pools, but to the Glenn

1 Law Firm’s “attorney escrow account,” after which the Glenn Law Firm was to pass those funds  
2 along to the Black Pools. (*Id.*)

3 In soliciting money from the Pool Participants, Defendants made material  
4 misrepresentations to Pool Participants, such as: (1) pool funds would be held in a fiduciary-  
5 protected, separate bank account and used as collateral to establish lines of credit to trade binary  
6 options and/or forex on Pool Participants’ behalf; (2) the pools would yield 10–70% monthly  
7 returns; (3) more than 85% of Defendants’ trades were successful; and (4) Defendants’  
8 investment of pool funds was overseen by a “globally renowned and highly respected fiduciary  
9 accounting firm.” (ECF No. 3 at 26–30; ECF No. 3-7 at 1–2; ECF No. 3-8 at 1–3; ECF No. 3-9  
10 at 1–3; ECF No. 3-10 at 1–2; ECF No. 3-11 at 11–12; ECF No. 3-13 at 138–143; ECF No. 3-14;  
11 ECF No. 3-15 at 1–6.) The CFTC asserts each of these statements are false.

12 Defendants also omitted material facts during their solicitation of funds, such as: (1)  
13 Defendants had actually traded very few pool funds in binary options or forex; (2) binary options  
14 and forex trading involves significant risk of trading losses; (3) Defendants were using  
15 approximately 77% of the pool funds received to pay personal expenses and make Ponzi  
16 payments<sup>4</sup> prior to trading any funds; and (4) Defendants had failed to return principal  
17 investments or deliver profits to other Pool Participants. (ECF No. 3 at 27–30; ECF No. 3-7 at 2;  
18 ECF No. 3-8 at 1; ECF No. 3-9 at 3; ECF No. 3-10 at 2; ECF No. 3-11 at 12; ECF No. 3-15 at 6.)  
19 Importantly, Defendants failed to disclose the fact that, in 2018, the California Department of  
20 Business Oversight (“California DBO”) issued a Desist and Refrain Order against Financial  
21 Solution, Black, and Mancuso, based on findings that these Defendants had unlawfully sold  
22 unregistered securities in California and made material misrepresentations or omissions to a Pool  
23 Participant in connection with the Black Pools. (ECF No. 3 at 26–27, 33; ECF No. 3-7 at 2; ECF  
24 No. 3-8 at 2–3; ECF No. 3-9 at 3; ECF No. 3-10 at 2.) Indeed, Defendants did not abide by the

---

25 <sup>4</sup> A “Ponzi scheme” is a “fraudulent investment scheme in which money contributed by  
26 later investors generates artificially high dividends or returns for the original investors, whose  
27 example attracts even larger investments.” *Black’s Law Dictionary* (10th ed. 2014). In ordinary  
28 operation (and as used herein), a “Ponzi payment” occurs when “[m]oney from the new investors  
is used directly to repay or pay interest to earlier investors, usually without any operation or  
revenue-producing activity other than the continual raising of new funds.” *Id.*

1 California DBO's Order and presently continue to solicit prospective Pool Participants for the  
2 Black Pools. (See ECF No. 3-11 at 15 (Pool participants deposited funds for trading in the Black  
3 Pools at least as recently as January 29, 2020).)

4 The CFTC asserts Defendants have misappropriated the vast majority of the pool funds.  
5 Of the approximately \$14.32 million Defendants received from Pool Participants during the  
6 Relevant Period, Defendants deposited only \$10,000 into U.S. trading accounts in the name of the  
7 Black Pools. (ECF No. 3 at 23; ECF No. 3-11 at 20–23.) At least some of those funds were lost  
8 trading forex. (*Id.*) Financial Solution and Financial Tree, by and through Black, transferred  
9 approximately \$254,280 overseas to possible binary options or forex trading firms but received  
10 back only approximately \$59,239. (*Id.*) Thus, very little trading — and no profitable trading —  
11 occurred.

12 Instead, Defendants misappropriated approximately \$4.94 million (approximately 34% of  
13 pool funds) to make Ponzi payments to other Pool Participants. (ECF No. 3 at 23–24; ECF No.  
14 3-11 at 19–20.) Defendants misappropriated at least an additional \$6.3 million for unauthorized  
15 personal or business expenses. (ECF No. 3 at 24; ECF No. 3-11 at 15–19.) For example, Glenn  
16 misappropriated at least \$285,000 in “transfer fees” pursuant to his Paymaster Agreement with  
17 Black, which he then transferred to other bank accounts he owned/controlled and used for  
18 expenses related to his divorce and spousal support. (*Id.*) Black withdrew at least \$367,000 in  
19 pool funds in cash, and spent additional pool funds on, among other things, personal travel, rent  
20 for his personal residence, legal fees, online gambling, multilevel marketing programs, food and  
21 dining expenses, and software and online advertising. (ECF No. 3 at 24–25; ECF No. 3-11 at 17.)  
22 Financial Solution and Financial Tree transferred at least \$3.98 million of pool funds to business  
23 and personal bank accounts owned by Defendant Mancuso, who later withdrew at least \$1.3  
24 million of those funds in cash and spent additional funds on items such as personal travel,  
25 limousine expenses, spa and haircare expenses, and home renovations. (ECF No. 3 at 25; ECF  
26 No. 3-11 at 18–19.) Financial Solution and Financial Tree also transferred at least \$228,000 in  
27 pool funds to business and personal bank accounts owned/controlled by Tufo, who used the funds  
28 to pay for items such as automobile-related expenses, eating out, groceries, insurance premiums,

1 office expenses, utilities, and miscellaneous household expenses. (ECF No. 3 at 25; ECF No. 3-  
2 11 at 19.)

3 Financial Solution and/or the Glenn Law Firm also transferred over \$1.8 million to Relief  
4 Defendants Suisse Group (USA) LLC (“Suisse Group”), JMC Industries LLC (“JMC”), Landes  
5 Capital Management, LLC (“Landes Capital”), Kingdom Trust LLC (“Kingdom”), Herbert  
6 Caswell (“Casswell”), Anne Mancuso, and Tyler Mancuso (collectively, “Relief Defendants”).  
7 For example, Financial Solution transferred \$500,000 in pool funds to Suisse Group, and  
8 Glenn/the Glenn Law Firm transferred \$300,000 in pool funds to JMC. (*See* ECF No. 3 at 19–21,  
9 41; ECF No. 3-11 at 9–10, 20–21.) The CFTC asserts both Suisse Group and JMC were alter  
10 egos of and controlled by Casswell, who comingled his personal funds with the Suisse Group and  
11 JMC funds. (*Id.*) JMC later transferred \$200,000 in pool funds to Landes Capital, and Suisse  
12 Group later transferred over \$150,000 to personal bank accounts owned by Casswell. (ECF No. 3  
13 at 19, 42; ECF No. 3-11 at 21–23.) Mancuso also transferred at least \$593,000 to his wife and  
14 son, Anne and Tyler Mancuso. (ECF No. 3 at 20–21; ECF No. 3-11 at 10–11, 18–19.) Kingdom  
15 received transfers of over \$1 million in pool funds from Financial Solution, \$25,000 from the  
16 BBB Jabez Foundation (which Black controls), and \$25,000 from Tyler Mancuso. (ECF No. 3 at  
17 20; ECF No. 3-11 at 17–18.) According to CFTC, none of the Relief Defendants provided  
18 legitimate services to the Black Pools or Pool Participants for the money they received.

19 To conceal the misappropriation of funds, Financial Solution, by and through Black,  
20 created and issued false account statements that inflated and misrepresented trading returns and  
21 the value of Pool Participants’ interests in the Black Pools. (ECF No. 3 at 21, 31; ECF No. 3-7 at  
22 3; ECF No. 3-8 at 3–4, 16–66; ECF No. 3-9 at 3–4, 24–113; ECF No. 3-10 at 3, 11–19; ECF No.  
23 3-11 at 4–7, 11–12, 17–19; ECF No. 3-14 at 14; ECF No. 3-15 at 5, 7–43.) However, when Pool  
24 Participants requested the return of their investment funds, Defendants made misrepresentations  
25 and/or omitted material facts regarding their failure to do so in order to lull the Pool Participants.  
26 (ECF No. 3 at 31; ECF No. 3-11 at 16–20.) For example, Defendants sent letters blaming  
27 delayed payments on “breach of contract and nonpayment with some of our banking sources.”  
28 (ECF No. 3 at 31–32; ECF No. 3-7 at 45.) One Pool Participant was told “funds were delayed

1 because the European market had fluctuation and it was their summer vacations.” (ECF No. 3 at  
2 33; ECF No. 3-15 at 5.) In another instance, Defendants maintained “there was a legal issue as to  
3 why the funds did not transfer from Singapore to Hong Kong.” (ECF No. 3 at 33; ECF No. 3-9 at  
4 19–21.) In sum, Pool Participants received “one story after the next” from Defendants. (*Id.*)  
5 Nevertheless, Defendants continued to solicit and/or accept new pool funds, even after it was  
6 clear that Financial Solution and New Money were failing to repay existing Pool Participants.

7 In addition to the foregoing conduct, CFTC alleges Defendants were required to register  
8 with CFTC as commodity pool operators (“CPOs”) or as associated persons (“APs”) of a CPO  
9 but failed to do so.<sup>5</sup> (ECF No. 3 at 38–39; ECF No. 3-11 at 11.) Similarly, Defendants were  
10 obligated to determine whether any of the Pool Participants were eligible contract participants  
11 (“ECPs”) as defined under the Act, yet Defendants failed to make this inquiry. (ECF No. 3 at 38,  
12 ECF No. 3-7 at 2; ECF No. 3-8 at 2; ECF No. 3-9 at 2; ECF No. 3-10 at 2.)

13 On June 15, 2020, CFTC filed a Complaint for Injunctive Relief, Civil Monetary  
14 Penalties, Restitution, Disgorgement and Other Equitable Relief against Defendants and Relief  
15 Defendants for various violations of the Act and Regulations. (ECF No. 1.) Specifically, the  
16 Complaint asserts six counts against Defendants for violations of the Act and Regulations: (1)  
17 Commodity Options Fraud, in violation of § 4c(b) of the Act (7 U.S.C. § 6c(b) (2018)), and  
18 Regulation 32.4 (17 C.F.R. § 32.4 (2019)); (2) Forex Fraud, in violation of § 4b(a)(2)(A)–(C) of  
19 the Act (7 U.S.C. § 6b(a)(2)(A)–(C) (2018)), and Regulation 5.2(b) (17 C.F.R. § 5.2(b) (2019));  
20 (3) Fraud by CPOs and APs of CPOs, in violation of § 4o(1)(A)–(B) of the Act (7 U.S.C. §  
21 6o(1)(A)–(B) (2018)); (4) Failure to Register with CFTC, in violation of §§ 2(c)(2)(C)(iii)(I)(cc),  
22 4k(2), 4m(1) of the Act (7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6k(2), 6m(1) (2018)), and Regulation  
23 5.3(a)(2) (17 C.F.R. § 5.3(a)(2) (2019)); (5) Comingling of Funds and Failure to Operate Pools as  
24 Separate Entities and Properly Receive Pool Funds, in violation of Regulation 4.20(a)(1), (b)–(c)

---

25 <sup>5</sup> Pursuant to the Act, an entity is required to be registered with CFTC as a CPO when it  
26 engages in business that is of the nature of a commodity pool and, in connection with that  
27 business, solicits, receives, or accepts pool funds from participants for the purpose of trading in  
28 commodity interests. An individual acts as an AP of a CPO by, in his capacity as partner, officer,  
employee, consultant, or agent of the CPO, soliciting or supervising the solicitation of funds for  
participation in the CPO’s pool.

1 (17 C.F.R. §§ 4.20(a)(1), (b)–(c) (2019)); and (6) Failure to Provide Pool Participants with  
2 Disclosures and Other Required Documents, in violation of Regulations 4.21 and 4.22 (17 C.F.R.  
3 §§ 4.21, 4.22 (2019)). (ECF No. 1 at 38–54.) The CFTC filed the instant Motion for SRO  
4 concurrently with its Complaint. (ECF No. 3.)

## 5 II. STANDARD OF LAW

6 The CFTC is authorized by 7 U.S.C. § 13a-1 to institute an action in federal district court  
7 whenever it appears violations of any provision of the Act have occurred. This section also  
8 provides that the district court may issue a permanent or temporary injunction against any person  
9 who “has engaged, is engaging, or is about to engage in any act or practice constituting a  
10 violation of any provision of this chapter or any rule, regulation, or order thereunder.” 7 U.S.C.  
11 §§ 13a-1(a)–(b); *see also U.S. CFTC v. Driver (Driver)*, 877 F. Supp. 2d 968, 981 (C.D. Cal.  
12 2012), *aff’d sub nom. CFTC v. Driver*, 585 Fed. Appx. 366 (9th Cir. 2014). The legal standards  
13 applicable to temporary restraining orders are the same as those applicable to preliminary  
14 injunctions. *See Stuhlberg Int’l Sales Co., Inc. v. John D. Brush and Co., Inc.*, 240 F.3d 832, 839  
15 n.7 (9th Cir. 2001).

16 “The injunctive relief contemplated in this portion of the Act is remedial in nature, and is  
17 designed to prevent injury to the public and to deter future illegal conduct.” *U.S. CFTC v. Yu*  
18 (*Yu*), No. 12-CV-3921 YGR, 2012 WL 3283430, at \*4 (N.D. Cal. Aug. 10, 2012). Unlike private  
19 actions, in actions for statutory injunctive relief, CFTC need not prove irreparable injury or the  
20 inadequacy of other remedies as required in private injunctive suits. *See Driver*, 877 F. Supp. 2d  
21 at 981; *CFTC v. Hunt (Hunt)*, 591 F.2d 1211, 1220 (7th Cir. 1979); *Trailer Train Co. v. State Bd.*  
22 *of Equalization*, 697 F.2d 860, 869 (9th Cir. 1983). Rather, a *prima facie* showing that a violation  
23 of the law has occurred and that “there is some reasonable likelihood of future violations” is  
24 sufficient. *Hunt*, 591 F.2d at 1220; *see also Fed. Election Comm’n v. Furgatch*, 869 F.2d 1256,  
25 1261 (9th Cir. 1989) (in cases involving statutory injunctions on the basis of past violations, party  
26 moving for injunctive relief must show only that there is a “likelihood” of future violations);  
27 *CFTC v. British Am. Commodity Options Corp. (British Am.)*, 560 F.2d 135, 141–42 (2d Cir.  
28 1977), *cert. denied*, 438 U.S. 905 (1978) (“well-established” that agency need only show

1 reasonable likelihood wrong will be repeated for injunctive relief); *CFTC v. J. S. Love & Assoc.*  
2 *Options, Ltd.*, 422 F. Supp. 652, 661 (S.D.N.Y. 1976).

3 Finally, the Eastern District of California Local Rules impose additional requirements for  
4 a motion for a temporary restraining order. First, the Court must consider whether the moving  
5 party has unnecessarily delayed in seeking injunctive relief. *See* L.R. 231(b). Second, the  
6 moving party must provide specific documents to the court in support of the requested temporary  
7 restraining order. *See* L.R. 231(c).

### 8 **III. ANALYSIS**

#### 9 **A. Procedural Requirements**

10 As a preliminary matter, the Court finds CFTC has met the procedural requirements  
11 outlined in Local Rule 231(c) by providing nearly 900 pages of documents in support of its  
12 motion, which include the declarations of Elsie Robinson, an investigator for CFTC, and several  
13 Pool Participants who were allegedly defrauded by Defendants. (ECF Nos. 3-7-3-15); E.D. Cal.  
14 L.R. 231(c). The Court is also satisfied that CFTC has not unnecessarily delayed in seeking  
15 injunctive relief. (ECF No. 3-1; ECF No. 3-16); E.D. Cal. L.R. 231(b).

16 Additionally, there is good cause to believe that notice to Defendants and Relief  
17 Defendants at this time would frustrate the emergency relief CFTC seeks by providing an  
18 incentive and opportunity to Defendants and Relief Defendants to dissipate Assets and/or destroy  
19 Records before CFTC obtains and serves the requested SRO. (*See* ECF No. 3 at 70; ECF No. 3-  
20 16); Fed. R. Civ. P. 65(b)(1); *see also* 7 U.S.C. § 13a-1(a) (providing that a restraining order  
21 which freezes assets or prohibits destruction of records or refusal to permit CFTC to inspect  
22 records may be issued *ex parte*). Therefore, submission of the Motion for SRO *ex parte* was  
23 warranted.

#### 24 **B. Jurisdiction/Venue**

25 The CFTC's Motion is properly before this Court pursuant to Section 6c of the Act, 7  
26 U.S.C. § 13a-1, which authorizes CFTC to seek injunctive and other relief in the proper district  
27 court of the United States against any person whenever it appears to CFTC that such person has  
28 engaged, is engaging, or is about to engage in any act or practice constituting a violation of any

1 provision of the Act or any rule, regulation, or order thereunder. This Court also has jurisdiction  
2 pursuant to 28 U.S.C. § 1331 (2018) (federal question jurisdiction) and 28 U.S.C. § 1345 (2018)  
3 (district courts have original jurisdiction over civil actions commenced by the United States or by  
4 any agency expressly authorized to sue by Act of Congress).

5 Venue properly lies in this District pursuant to 7 U.S.C. § 13a-1(e), because Defendants  
6 transacted business in this District, and certain of the acts and practices in violation of the Act and  
7 Regulations occurred, are occurring, or are about to occur within this District, among other  
8 places. (*See* ECF No. 3 at 16–19.)

9 C. *Prima Facie Case of Illegality*

10 The CFTC contends Defendants committed fraud and misappropriated funds, failed to  
11 properly register with CFTC as CPOs and APs of CPOs, comingled funds, and failed to provide  
12 clients with specific disclosures and other required documents, in violation of multiple provisions  
13 of the Act and Regulations. The CFTC further alleges Relief Defendants have received and will  
14 continue to receive funds, Assets, or other property obtained through Defendants’ violative  
15 conduct and have been unjustifiably enriched thereby.

16 i. *Derivative and Controlling Person Liability*

17 As an initial matter, the Court addresses derivative and controlling person liability. One is  
18 a controlling person when he or she has “the possession, direct or indirect, of the power to direct  
19 or cause the direction of the management and policies of a person whether through the ownership  
20 of voting securities, by contract, or otherwise.” *CFTC v. Capitol Equity FX, LLC (Capitol*  
21 *Equity)*, No. EDCV 17-743 JGB (SKx), 2017 WL 9565340, at \*4 (C.D. Cal. Jul. 31, 2017).  
22 Under § 13(b) of the Act (7 U.S.C. § 13c(b)), a controlling person of an entity is liable for the  
23 violations of that entity if the controlling person knowingly induced the violations, directly or  
24 indirectly, or did not act in good faith. *See CFTC v. R.J. Fitzgerald & Co. (R.J. Fitzgerald)*, 310  
25 F.3d 1321, 1334 (11th Cir. 2002), *cert denied*, 543 U.S. 1034 (2004) (“A fundamental purpose of  
26 Section 13[(b)] is to allow the [CFTC] to reach behind the corporate entity to the controlling  
27 individuals of the corporation and to impose liability for violations of the Act directly on such  
28 individuals as well as the corporation itself.”). Conversely, the act, omission, or failure of any

1 person acting for an entity within the scope of his employment or office shall be attributed to the  
2 entity, as well as the person. *Id.* at 1335 (imposing liability on corporate entity because of acts of  
3 individuals); 7 U.S.C. § 2(a)(1)(B) (2018); 17 C.F.R. § 1.2 (2019).

4 Here, Black is liable for Financial Tree’s, Financial Solution’s, and New Money’s  
5 violations described herein because he was the creator and controlling person of those entities.  
6 *R.J. Fitzgerald*, 310 F.3d at 1334–35 (defendant who was ultimate decision maker at firm was  
7 ultimately responsible for compliance with Act and Regulations); *Capitol Equity*, 2017 WL  
8 9565340, at \*4 (husband and wife who were president and sole owner, respectively, of relevant  
9 entities and had opened trading accounts in entities’ names were controlling persons of those  
10 entities). For the same reasons, Glenn is liable as a controlling person for the Glenn Law Firm’s  
11 violations described herein because he is the founder, managing attorney, and only practitioner at  
12 the Glenn Law Firm. *Id.*

13 Similarly, Financial Tree, Financial Solution, New Money, and the Glenn Law Firm are  
14 liable for the acts of their agents, i.e., Black, Mancuso, Tufo, and Glenn. 7 U.S.C. § 2(a)(1)(B)  
15 (2018); 17 C.F.R. § 1.2 (2019); *CFTC v. Am. Bullion Exch. ABEX Corp. (Am. Bullion)*, No.  
16 SACV10-1876-DOC (RNBx), 2014 WL 12603558, at \*8 (C.D. Cal. Sept. 16, 2014). For  
17 example, Black opened bank accounts as the sole signatory for Financial Tree, Financial Solution,  
18 and New Money. (ECF No. 3 at 40–41; ECF No. 3-11 at 4–6.) Black also signed pool  
19 agreements on behalf of Financial Solution and New Money. (*Id.*) Glenn signed the 2014  
20 Paymaster Agreement with Financial Tree on behalf of the Glenn Law Firm and opened each of  
21 the Glenn Law Firm bank accounts to which Pool Participants contributed funds. (ECF No. 3 at  
22 41; ECF No. 3-11 at 7–8.) Mancuso and Tufo both acted as APs for Financial Tree, Financial  
23 Solution, and New Money by soliciting Pool Participants for the Black Pools. (ECF No. 3 at 18;  
24 ECF No. 3-7 at 1; ECF No. 3-8 at 1.)

25 Based on the foregoing, CFTC has sufficiently established a *prima facie* case that  
26 Defendants are derivatively liable for each other’s misconduct.

27 ///

28 ///

1                                   ii.            *Violation of Antifraud Provisions of the Act and Regulations*

2            Sections 4b(a)(2)(A)–(C) of the Act (7 U.S.C. § 6b(a)(2)(A)–(C) (2018)) and  
3            corresponding Regulation 5.2(b) (17 C.F.R. § 5.2(b) (2019)) prohibit fraudulent activities “in  
4            connection with” commodity futures trading. The CFTC need only prove three elements to  
5            establish its claims of fraud under §§ 4b(a)(2)(A)–(C): (1) the making of a misrepresentation,  
6            misleading statement, or deceptive omission; (2) scienter; and (3) materiality. *Driver*, 877 F.  
7            Supp. 2d at 977; *R.J. Fitzgerald*, 310 F.3d at 1328. Actionable misrepresentations include those  
8            made to customers when soliciting their funds. *Saxe v. E.F. Hutton & Co.*, 789 F.2d 105, 111 (2d  
9            Cir. 1986).

10           The antifraud provisions of § 4c(b) of the Act (7 U.S.C. § 6c(b) (2018)) apply to fraud in  
11           connection with commodity options trading, such that the same misrepresentations and omissions  
12           that violate § 4b in connection with futures trading also violate § 4c(b) and Regulation 32.4 (17  
13           C.F.R. § 32.4 (2019)) in connection with options. *See CFTC v. Rosenberg (Rosenberg)*, 85 F.  
14           Supp. 2d 424, 445 (D. N.J. 2000) (analyzing §§ 4b(a) and 4c(b) claims together).

15           Sections 4o(1)(A) and (B) of the Act (7 U.S.C. § 6o(1)(A)–(B) (2018)) make it unlawful  
16           for a commodity pool operator to engage in fraudulent activities in connection with commodity  
17           futures trading. The elements of proof for § 4o(1) overlap with the elements of proof for § 4b(a).  
18           *Driver*, 877 F.Supp.2d at 978–79 (“The same intentional or reckless misappropriations,  
19           misrepresentations, and omissions of material fact violative of section 4b of the Act . . . also  
20           violate section 4o(1)(A)–(B) of the Act”). Fraud as a commodity pool operator, however, does  
21           not require scienter. *CFTC v. Savage*, 611 F.2d 270, 285 (9th Cir. 1979) (“[W]e hold that an  
22           action for injunctive relief by CFTC under section 4o(1) requires only that the violator have acted  
23           intentionally. That is, he must have intended to employ the ‘device, scheme, or artifice’ but it is  
24           not necessary that he know that its result will be to defraud the client or prospective client.”).

25           The CFTC asserts Defendants committed fraud in violation of the aforementioned  
26           antifraud provisions of the Act and the Regulations by making material misrepresentations and  
27           omissions to Pool Participants, issuing false account statements to Pool Participants, and  
28           misappropriating pool funds for personal use and to make Ponzi payments.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

a) *Fraud by Misrepresentations and Omissions*

First, CFTC’s supporting documents make a *prima facie* showing that when soliciting funds from prospective Pool Participants, Defendants knowingly or recklessly made misrepresentations and omissions (via electronic mail, telephonic seminars, telephone calls, mailings, and websites), including but not limited to the following: (1) misrepresenting that pool funds would be held in a fiduciary-protected, separate bank account and used as collateral to establish lines of credit to trade binary options and/or forex on Pool Participants’ behalf; (2) misrepresenting that the pools would yield 10–70% monthly returns; and (3) misrepresenting that more than 85% of Defendants’ trades were successful. (ECF No. 3 at 26–30; ECF No. 3-7 at 1–2, 4–9, 26–28; ECF No. 3-8 at 1–3, 5–15; ECF No. 3-9 at 1–3, 6–11; ECF No. 3-10 at 1–2, 5–10; ECF No. 3-11 at 11–12, 15, 17; ECF No. 3-13 at 138–143; ECF No. 3-14; ECF No. 3-15 at 1–6.) Further, Defendants knowingly made misrepresentations to existing Pool Participants by issuing false account statements that reflected non-existent gains and providing varied excuses for their failure to return funds requested by Pool Participants. (ECF No. 3 at 26, 30–31; ECF No. 3-7 at 2–3, 10–25, 29–36, 39–52; ECF No. 3-8 at 2–4, 16–66; ECF No. 3-9 at 3–4, 24–113; ECF No. 3-10 at 2–3, 11–19; ECF No. 3-11 at 11–12, 16, 19–23; ECF No. 3-14 at 14; ECF No. 3-15 at 5.)

Similarly, CFTC’s supporting documents make a *prima facie* showing that Defendants knowingly made material omissions to attract and retain Pool Participants, including but not limited to the following: (1) omitting that the California DBO previously issued a Desist and Refrain Order against Financial Solution, Black, and Mancuso for their actions in connection with the Black Pools; (2) omitting that Defendants would pay themselves approximately 43% of pool fund principal received prior to trading any funds; (3) omitting that purported profits or withdrawals of principal paid to some Pool Participants were in fact the principal deposits of other clients and were not generated by profitable trading activity; (4) omitting that no Defendant was registered with CFTC as required by the Act and Regulations; and (5) omitting from prospective Pool Participants that as early as December 2016, Defendants were communicating to existing Pool Participants that they were not returning principal or delivering profits as promised

///

1 because they were struggling to make profitable trades. (ECF No. 3 at 26–28, 30; ECF No. 3-7 at  
2 2; ECF No. 3-8 at 2; ECF No. 3-9 at 3; ECF No. 3-10 at 2; ECF No. 3-11 at 13–23.)

3 The Court finds Defendants’ false statements and failure to inform clients constitute  
4 misrepresentations and omissions in violation of the Act. *See, e.g., R.J. Fitzgerald*, 310 F.3d at  
5 1329, 1332–33 (misrepresentations included overemphasis of profit potential and downplayed  
6 risk of loss, and failure to disclose that 95% of firm’s clients lost money on transactions); *CFTC*  
7 *v. Muller*, 570 F.2d 1296, 1300–01 (5th Cir. 1978) (failure to open trading account and issuance  
8 of fictitious trade statements supported injunction); *CFTC v. Complete Devs. (Complete Devs.)*,  
9 No. 4:10 CV 2287, 2014 WL 794181, at \*17 (N.D. Ohio Feb. 26, 2014) (failure to disclose  
10 details regarding commissions based on investments was actionable); *SEC v. Wang*, No. LA CV  
11 13-07553 JAK (SSx), 2015 WL 12656906, at \*17 (C.D. Cal. Aug. 18, 2015) (citing *United States*  
12 *v. Brown*, 578 F.2d 1280, 1285 (9th Cir. 1978) (finding “activities tending to lull investors, either  
13 to prevent discovery of fraud or to permit further fraudulent activities to progress unhindered,”  
14 actionable.)

15 Second, as for the materiality requirement, “[a] statement [or omission] is material if it is  
16 substantially likely that a reasonable investor would consider the matter important in making an  
17 investment decision.” *Driver*, 877 F. Supp. 2d at 977 (citing *R.J. Fitzgerald*, 310 F.3d at 1332–  
18 33). Misrepresentations concerning the riskiness and profitability of an investment are material.  
19 *Id.* Similarly, misrepresentations that a pool is consistently profitable and employs loss-limiting  
20 systems are material. *Capitol Equity*, 2017 WL 9565340, at \*4. The location of investors’  
21 money is also material. *Am. Bullion*, 2014 WL 12603558, at \*6; *see also Rosenberg*, 85 F. Supp.  
22 2d at 447–48 (reporting erroneous account balances, issuing false monthly statements, and failure  
23 to make trades in accordance with representations were material to investors) (collecting cases).  
24 Additionally, facts regarding a firm or broker’s trading experience and past success are material  
25 factors which a reasonable investor would consider when deciding to invest. *CFTC v.*  
26 *Commonwealth Fin. Grp., Inc.*, 874 F. Supp. 1345, 1353–54 (S.D. Fla. 1994).

27 Here, the supporting documents establish a *prima facie* case that Defendants’  
28 misrepresentations and omissions were material as a reasonable investor would consider them

1 important when deciding to invest. Indeed, CFTC has submitted evidence indicating that  
2 Defendants' misrepresentations and omissions caused Pool Participants to invest and remain  
3 invested with Defendants. (ECF No. 3 at 26, 30–31; ECF No. 3-7 at 2–3, 10–25, 29–36, 39–52;  
4 ECF No. 3-8 at 2–4, 16–66; ECF No. 3-9 at 3–4, 24–113; ECF No. 3-10 at 2–3, 11–19; ECF No.  
5 3-11 at 11–12, 16, 19–23; ECF No. 3-14 at 14; ECF No. 3-15 at 5.)

6 Third, proof of scienter need not establish “evil motive or an intent to injure,” but merely  
7 requires evidence that a defendant committed the alleged wrongful acts intentionally, or “that the  
8 representations were made with a reckless disregard for their truth or falsity.” *Driver*, 877 F.  
9 Supp. 2d at 977; *see also CFTC v. Noble Metals Int’l, Inc.*, 67 F.3d 766, 774 (9th Cir. 1995)  
10 (holding that scienter is established when defendants act intentionally or with “careless  
11 disregard”). A defendant acts recklessly when, for example, he fails to conduct sufficient  
12 diligence on an investment prior to soliciting customers for the investment. *See Complete Devs.*,  
13 2014 WL 794181, at \*17. Likewise, lulling activities can evidence scienter. *See SEC v.*  
14 *Holschuh*, 694 F.2d 130, 144 (7th Cir. 1982) (“The court was entitled to consider the lulling  
15 activities because they were evidence of a scheme . . . and was relevant to the question of  
16 intent.”).

17 In the instant case, there is overwhelming evidence that Defendants' misrepresentations  
18 were made intentionally and with knowledge of their falsity. Defendants acted with requisite  
19 scienter when they misrepresented that: (1) pool funds would be held in a fiduciary-protected,  
20 separate bank account; (2) more than 85% of Defendants' trades were successful, yielding 10–  
21 70% monthly returns; (3) the California DBO Desist and Refrain Order previously issued against  
22 Financial Solution, Black, and Mancuso was “resolved some time ago . . . [relating to] a currency  
23 program that was not our service” (ECF No. 3 at 33; ECF 3-9 at 4, 34–35); (4) the payments  
24 Defendants made to select Pool Participants were withdrawals of principal or returns from  
25 profitable trading; and (5) where Defendants were not returning principal or delivering profits as  
26 promised, it was because they were struggling to make profitable trades. (ECF No. 3 at 26–30;  
27 ECF No. 3-7 at 1–2, 4–9, 26–28; ECF No. 3-8 at 1–2, 5–15; ECF No. 3-9 at 1–3, 6–11, 19–21;

28 ///

1 ECF No. 3-10 at 1–2, 5–10; ECF No. 3-11 at 11–23; ECF No. 3-13 at 138–143; ECF No. 3-14;  
2 ECF No. 3-15 at 1–6.)

3 In reality, the truth is that binary options and forex trading is incredibly risky with no  
4 guaranteed returns. *See R.J. Fitzgerald*, 310 F.3d at 1333. Moreover, Defendants had actually  
5 traded very few pool funds in binary options or forex, and the trades that were completed resulted  
6 in significant losses of funds. (*See* ECF No. 3 at 23, 28; ECF No. 3-7 at 2; ECF No. 3-8 at 2;  
7 ECF No. 3-9 at 3; ECF No. 3-10 at 2; ECF No. 3-11 at 20, 22–23.) Similarly, as soon as pool  
8 funds were deposited in an account designated by the Glenn Law Firm, the pool funds were not  
9 used for trading purposes, but rather were transferred to Defendants’ personal and business  
10 accounts to make Ponzi payments and fund Defendants’ personal expenses. (*See* ECF No. 3 at  
11 23–25; ECF No. 3-11 at 13, 15–17, 18–23.) Further, the California DBO Desist and Refrain  
12 Order was issued against Financial Solution, Black, and Mancuso in connection with the Black  
13 Pools, not some other financial service. (*See* ECF No. 3 at 25; ECF No. 3-15 at 44–47.) Finally,  
14 Defendants continued to solicit new Pool Participants even while failing to return principal  
15 investments or deliver profits to other Pool Participants, and even after the California DBO issued  
16 a Desist and Refrain Order against Financial Solution, Black, and Mancuso in connection with the  
17 Black Pools. (*See* ECF No. 3-11 at 15 (Pool participants deposited funds for trading in the Black  
18 Pools at least as recently as January 29, 2020).)

19 For the foregoing reasons, CFTC has made a *prima facie* case that Defendants made  
20 fraudulent representations and omissions to prospective and existing Pool Participants in violation  
21 of the Act and Regulations.

22 *b) Fraud by Misappropriation*

23 “Soliciting or obtaining funds from investors for trading, then failing to trade the funds  
24 while using them for personal and business expenses, is misappropriation.” *Driver*, 877 F. Supp.  
25 2d at 978 (citing *CFTC v. Emerald Worldwide Holdings, Inc.*, No. CV03-8339AHM, 2005 WL  
26 1130588, at \*7 (C.D. Cal. Apr. 19, 2005)). “Misappropriation or diversion of funds entrusted to  
27 one for trading purposes is ‘willful and blatant fraudulent activity’ that clearly violates the Act.”  
28 *Id.* (quoting *CFTC v. Weinberg*, 287 F. Supp. 2d 1100, 1106 (C.D. Cal. 2003).) Here, Defendants

1 violated the Act and Regulations by misappropriating pool funds intended for binary options and  
2 forex contracts trading to instead make Ponzi payments to existing Pool Participants and to fund  
3 Defendants' personal expenses. (See ECF No. 3 at 23–25; ECF No. 3-11 at 13, 15–23.)

4 Based on the foregoing, the Court finds CFTC has amply demonstrated Defendants made  
5 material misrepresentations and omissions in the course of soliciting investments from current  
6 and prospective Pool Participants and misappropriated pool funds, in violation of the antifraud  
7 provisions of the Act and Regulations, specifically, §§ 4b(a)(2)(A)–(C), 4c(b), and 4o(1)(A)–(B)  
8 of the Act, and Regulation 5.2(b). Accordingly, CFTC has made a *prima facie* showing that a  
9 violation of the law has occurred. *Driver*, 877 F. Supp. 2d at 981; *Hunt*, 591 F.2d at 1220; *Fed.*  
10 *Election Comm'n*, 869 F.2d at 1261. These violations, plus the reasonable likelihood of future  
11 violations (as discussed herein), satisfy the requisite showing for issuance of a temporary SRO  
12 freezing assets, prohibiting destruction of records, and prohibiting refusal to permit CFTC to  
13 inspect records. See *id.*; *Muller*, 570 F.2d at 1300; see also 7 U.S.C. § 13a-1(a)–(b) (permitting a  
14 court to grant injunctive relief for violations of any provision of the Act or Regulations).

15 *iii. Remaining Counts and Violations of the Act and Regulations*

16 As previously discussed, the Court finds CFTC has made a *prima facie* showing that  
17 Defendants violated the antifraud provisions of the Act and Regulations, and that such violations  
18 support granting the temporary injunctive relief CFTC seeks. In light of this finding, the Court  
19 need not reach the remaining claims against Defendants for purposes of its analysis of CFTC's  
20 motion for a temporary SRO.

21 **D. Reasonable Likelihood of Future Violations**

22 Determining the likelihood of future violations may involve consideration of past  
23 unlawful conduct. *CFTC v. Co Petro Mktg. Grp., Inc. (Co Petro)*, 502 F. Supp. 806, 818 (C.D.  
24 Cal. 1980), *aff'd*, 680 F.2d 573 (9th Cir. 1982); *Hunt*, 591 F.2d at 1220. In drawing such an  
25 inference from past violations, a court should look at the totality of the circumstances, including  
26 the egregiousness of the defendant's actions, whether the violations were isolated or recurrent, the  
27 degree of scienter involved, the sincerity of the defendant's assurances against future violations,  
28 the defendant's recognition of his conduct's wrongfulness, and whether the circumstances

1 indicate that the defendant is in a position that makes future violations likely to occur. *Driver*,  
2 877 F. Supp. 2d at 981–82; *Co Petro*, 502 F. Supp. at 818; *Hunt*, 591 F.2d at 1220; *British Am.*,  
3 560 F.2d at 142; *S.E.C. v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980); *see also CFTC v. S. Trust*  
4 *Metals, Inc.(S. Trust Metals)*, 894 F.3d 1313, 1328 (11th Cir. 2018) (“A court need not make a  
5 finding on every factor.”). In addition, “[w]hen the violation has been predicated upon systematic  
6 wrongdoing, rather than an isolated occurrence, a court should be more willing to enjoin future  
7 conduct.” *Driver*, 877 F. Supp. 2d at 981; *Hunt*, 591 F.2d at 1220; *see also British Am.*, 560 F.2d  
8 at 142 (because commodities trading is highly regulated and sensitive area of public trust, “any  
9 circumstances that indicate the defendant might repeat or continue his activity in violation of the  
10 registration requirements strongly favor entry of an injunction.”)

11 Here, the misconduct, as alleged, was neither isolated nor accidental. Defendants  
12 allegedly engaged in a highly egregious and systematic violation of the Act and Regulations by  
13 fraudulently soliciting and misappropriating over \$14.32 million in investment funds from at least  
14 91 Pool Participants over the past five years. (ECF No. 3 at 12, 22–30; ECF No. 3-7 at 1–2, 4–9,  
15 26–28; ECF No. 3-8 at 1–2, 5–15; ECF No. 3-9 at 1–3, 6–11; ECF No. 3-10 at 1–2, 5–10; ECF  
16 No. 3-11 at 11–23; ECF No. 3-13 at 138–143; ECF No. 3-14; ECF No. 3-15 at 1–6.)

17 Moreover, rather than admit any wrongdoing, Defendants took pains to conceal their  
18 fraud, including by issuing monthly statements reflecting profits that never occurred, making  
19 Ponzi payments to certain Pool Participants, and falsely assuring Pool Participants in order to lull  
20 them and solicit additional payments. (ECF No. 3 at 26, 30–31; ECF No. 3-7 at 2–3, 10–25, 29–  
21 36, 39–52; ECF No. 3-8 at 3–4, 16–66; ECF No. 3-9 at 3–4, 24–113; ECF No. 3-10 at 2–3, 11–  
22 19; ECF No. 3-11 at 11–23; ECF No. 3-14 at 14; ECF No. 3-15 at 5, 7–43; *see also, e.g.*, ECF  
23 No. 3-7 at 45 (November 15, 2017 letter from Black and Mancuso blaming “breach of contract  
24 and nonpayment from some of our previous banking sources” for nonpayment of funds to Pool  
25 Participants, but also claiming to have “hit the jackpot” with a new funding source and promising  
26 repayment by the end of the month); ECF No. 3-9 at 19–21 (Pool Participant was told his  
27 payment in August was delayed “because the European market had fluctuation and it was their  
28 summer vacations” and that “there was a legal issue as to why the funds did not transfer from

1 Singapore to Hong Kong.”.) These actions also detract from the sincerity of any assurances  
2 against future wrongdoing Defendants may express.

3 Lastly, the Court agrees with CFTC that because Defendants are not registered as CPOs or  
4 APs of CPOs, they are currently under no regulatory obligation to maintain Records (ECF No. 3  
5 at 38–39, 69; ECF No. 3-11 at 11) and therefore may more easily evade CFTC’s review. This  
6 supports a finding that Defendants are in a position that makes future violations likely to occur.  
7 Indeed, the fact that Defendants have continued to solicit investments from existing and  
8 prospective Pool Participants — *despite* the SEC charging Tufo in 1999 for defrauding investors  
9 in a separate scheme, as well as Tufo pleading guilty to criminal violations of the Alabama  
10 Securities Act in 2015 (ECF No. 3 at 18, 35; ECF No. 3-11 at 9; ECF No. 3-13 at 126–132);  
11 *despite* the California DBO issuing a Desist and Refrain Order against Financial Solution, Black,  
12 and Mancuso in April 2018, regarding their solicitations for the Black Pools (ECF No. 3 at 25–  
13 26; ECF No. 3-11 at 12; ECF No. 3-15 at 45–47); and *despite* the Colorado Supreme Court’s  
14 Attorney Regulation Counsel issuing Glenn three separate bar complaints regarding his role in the  
15 Black Pools fraud (ECF No. 3 at 36; ECF No. 3-15 at 49–54) — suggests Defendants will remain  
16 undeterred from fraudulently soliciting funds from members of the public. This, too, bolsters the  
17 Court’s finding that there is a likelihood of future wrongdoing.

18 E. Requested Relief

19 It has long been recognized that, “in an action brought to enforce the requirements of  
20 remedial statutes such as this Act, a district court has broad discretion to fashion appropriate  
21 relief.” *Muller*, 570 F.2d at 1300. Indeed, “[t]he district court has inherent power as a court of  
22 equity to order such temporary, ancillary relief in order to preserve the status quo so that an  
23 ultimate decision for the [CFTC] could be effective.” *Id.* (citing *SEC v. Manor Nursing Centers,*  
24 *Inc.*, 458 F.2d 1082, 1105–06 (2d Cir. 1972)).

25 Such ancillary relief may include an order to temporarily freeze the assets of a defendant,  
26 prohibit the destruction or records, or prohibit a defendant from preventing CFTC access to his  
27 records. *See Yu*, 2012 WL 3283430, at \*6–8 (granting *ex parte* SRO freezing the defendants’  
28 assets and prohibiting the destruction of/prevention of CFTC access to the defendants’ books and

1 records); *see also* *CFTC v. Morgan, Harris & Scott, Ltd.*, 484 F. Supp. 669, 678 (S.D.N.Y. 1979)  
2 (order freezing assets “is often necessary to ensure that the assets will be available to compensate  
3 public customers”); *U.S. CFTC v. Khara*, No. 15 CV 03497, 2015 WL 10849125, at \*4 (S.D.N.Y.  
4 May 5, 2015) (granting *ex parte* SRO requiring defendants to permit CFTC to inspect records).

5 Similarly, the Court may include an order to expedite discovery pursuant to Federal Rule  
6 of Civil Procedure 26(d), for the purpose of allowing CFTC to determine the full extent of a  
7 defendant’s alleged wrongdoing, locate the defendant’s other clients, other defendants, and relief  
8 defendants, identify client funds, and clarify the sources of various funds in advance of the  
9 hearing on the preliminary injunction. *Id.* at \*5 (issuing *ex parte* temporary SRO expediting  
10 discovery); *see also* *CFTC v. RFF GP, LLC*, No. 4:13-CV-382, 2013 WL 4083748, at \*8 (E.D.  
11 Tex. Jul. 10, 2013) (same).

12 Here, CFTC requests an SRO freezing Assets, allowing for the inspection of Records, and  
13 permitting expedited discovery in advance of any hearing on the preliminary injunction. The  
14 Court is satisfied that such relief is appropriate here, given Defendants’ solicitation of at least  
15 \$14.32 million from members of the public, nearly 77% of which has been misappropriated by  
16 Defendants for personal expenses and Ponzi payments, and the reasonable likelihood that  
17 Defendants will transfer or dissipate Assets or destroy or alter Records in the absence of an SRO.

18 In sum, the Court finds good cause exists to GRANT CFTC’s *ex parte* Motion for  
19 Statutory Restraining Order to freeze Assets, prohibit the destruction or alteration of Records, and  
20 prohibit the denial of access to those Records because CFTC has made a *prima facie* showing that  
21 Defendants violated the Act and Regulations, and there is a reasonable likelihood of future  
22 violations.

#### 23 **IV. CONCLUSION**

24 For the foregoing reasons, CFTC’s Motion for a Statutory Restraining Order and Other  
25 Equitable Relief (ECF No. 2) is hereby GRANTED, as follows:

- 26 A. Asset Freeze Order Prohibiting the Withdrawal, Transfer, Removal,  
27 Dissipation, and Disposal of Assets

28 Defendants and Relief Defendants are immediately RESTRAINED AND ENJOINED,

1 except as otherwise ordered by this Court, from directly or indirectly withdrawing, transferring,  
2 removing, dissipating, or otherwise disposing of any Assets, wherever located, including  
3 Defendants' and Relief Defendants' Assets held outside the United States. The Assets affected  
4 by this Order shall include existing Assets and Assets acquired after the effective date of this  
5 Order.

6 B. Maintenance of and Access to All Records Relating to Business Activities,  
7 Business, and Personal Finances

8 Defendants and Relief Defendants are hereby RESTRAINED from directly or indirectly  
9 destroying, altering, or disposing of, in any manner, any Records that relate or refer to the  
10 business activities or business or personal finances of any Defendant or Relief Defendant.

11 Defendants and Relief Defendants are hereby ORDERED to immediately allow  
12 representatives of CFTC to inspect any Records relating or referring to the business activities or  
13 business or personal finances of Defendants and Relief Defendants, including but not limited to:  
14 both hard-copy documents and ESI, wherever they may be situated and whether they are in the  
15 possession, custody, or control of Defendants, Relief Defendants, or others.

16 When inspecting Records that are subject to this Order, including those contained on  
17 computers and/or other electronic devices, CFTC should undertake reasonable measures to  
18 prevent review of Defendants' or Relief Defendants' privileged communications and/or other  
19 nonbusiness, nonfinancial materials by CFTC's attorneys and other staff who are part of the  
20 litigation team in this matter. Moreover, Defendants and Relief Defendants (or their counsel)  
21 shall promptly contact CFTC's counsel to assert any claims of privilege or other legal objections  
22 relating to the contents of any Records that are subject to this Order and promptly cooperate with  
23 CFTC's counsel to develop reasonable protocols to isolate and prevent disclosure of claimed  
24 privileged and/or other nonbusiness, nonfinancial materials to CFTC's attorneys and other staff  
25 who are part of the litigation team in this matter. However, nothing herein shall excuse  
26 Defendants or Relief Defendants from full and immediate compliance with this Court's Order  
27 permitting CFTC to inspect the books and Records which relate to Defendants' or Relief  
28 Defendants' business activities and their business and personal finances.

1 To facilitate meaningful inspection and review, Defendants and Relief Defendants shall,  
2 absent a valid assertion of their respective rights against self-incrimination under the Fifth  
3 Amendment, promptly identify and provide CFTC's staff with the location of all Records relating  
4 or referring to the business activities and business and personal finances of Defendants and Relief  
5 Defendants, including the locations of relevant ESI, including but not limited to computers,  
6 external hard drives, mobile devices, cloud storage and services, email accounts, websites, and all  
7 accounts at any bank, financial institution, or brokerage firm (including any introducing broker or  
8 futures commission merchant) under the ownership, possession, custody, control, operation of, or  
9 accessible by, any Defendant or Relief Defendant.

10 To the extent in-person inspection and review is feasible in light of the COVID-19  
11 pandemic, to ensure preservation and facilitate meaningful inspection and review, Defendants and  
12 Relief Defendants shall allow representatives of CFTC to make copies of documents and ESI on-  
13 site. If on-site copying is not practicable, representatives may make such copies off-site. After  
14 any such off-site copying, CFTC shall promptly return the original documents and devices upon  
15 which ESI is stored.

16 To the extent in-person inspection and review is not feasible in light of the COVID-19  
17 pandemic, to further facilitate meaningful inspection and review, CFTC shall be allowed to take  
18 steps to inspect and copy such Records from an offsite location or remotely, as follows:

19 *i. Delivery*

20 *a) Hard-Copy Documents*

21 The CFTC shall be allowed to inspect hard-copy documents by having any Defendant or  
22 Relief Defendant deliver hard-copy documents by mail, private carrier service, or email. If by  
23 mail or private carrier service, CFTC will provide for the expense of delivery each way. Once  
24 CFTC has collected and copied hard-copy documents, CFTC shall promptly return the original  
25 hard-copy documents. If by email, Defendants and Relief Defendants shall electronically scan  
26 hard-copy documents and send the electronic scan to CFTC. The scan should adhere to CFTC's  
27 Data Delivery Standards (*see* ECF No. 3-18), including but not limited to the requirements that

28 ///

1 black and white images must be 300 DPI Group IV single-page TIFF files, and color images must  
2 be produced in JPEG format.

3 *b) Electronic Equipment*

4 The CFTC shall be allowed to inspect ESI by having any Defendant or Relief Defendant  
5 deliver, by mail or private carrier service, electronic equipment containing ESI, including but not  
6 limited to, computers, external hard drives, and mobile devices. Defendants shall, absent a valid  
7 assertion of their respective rights against self-incrimination under the Fifth Amendment,  
8 promptly provide CFTC's staff with all usernames and passwords needed to access, forensically  
9 collect, and forensically copy Records relating or referring to the business activities or business or  
10 personal finances of the Defendants and Relief Defendants on their electronic equipment.

11 *ii. Remotely*

12 *a) Cloud Storage or Service*

13 The CFTC shall be allowed to inspect by collecting and copying ESI in cloud storage or  
14 service, including but not limited to cloud email accounts, electronic files, websites, and software  
15 as a service. Defendants and Relief Defendants shall, absent a valid assertion of their respective  
16 rights against self-incrimination under the Fifth Amendment, promptly provide CFTC's staff with  
17 all usernames and passwords needed to access, collect, and copy Records relating or referring to  
18 the business activities or business or personal finances of the Defendants and Relief Defendants  
19 in cloud storage.

20 *b) Electronic Equipment*

21 The CFTC shall be allowed to inspect ESI by providing to any Defendant or Relief  
22 Defendant a device that will plug into Defendant's or Relief Defendant's electronic equipment  
23 containing ESI, including but not limited to, computers, external hard drives, and mobile devices,  
24 to facilitate the logical collection and copying of ESI. Defendants and Relief Defendants will  
25 execute that collection and copying consistent with CFTC's instructions. After the logical  
26 collection and copying, Defendants and Relief Defendants shall return and deliver the device  
27 back to CFTC. The CFTC will provide for the expense of delivery for each device each way.  
28 Defendants and Relief Defendants shall, absent a valid assertion of their respective rights against

1 self-incrimination under the Fifth Amendment, promptly provide CFTC's staff with all usernames  
2 and passwords needed to access, collect, and copy Records relating or referring to the business  
3 activities or business or personal finances of Defendants and Relief Defendants on their electronic  
4 equipment.

5 C. Notice to Financial Institutions and Others that Hold or Control Assets or  
6 Records

7 To ensure the effectiveness of the Asset freeze and pending further order of this Court,  
8 any financial or brokerage institution, business entity, or person that receives actual notice of this  
9 Order and holds, controls, or maintains custody of any account or Asset or other property owned  
10 by, held for the benefit of, or otherwise under the control of any Defendant or Relief Defendant,  
11 shall not, in active concert or participation with Defendants or Relief Defendants, permit  
12 Defendants or Relief Defendants or other persons to withdraw, transfer, remove, dissipate, or  
13 otherwise dispose of any of Defendants' or Relief Defendants' Assets, except as directed by  
14 further order of the Court.

15 Any financial or brokerage institution, business entity, or person that receives actual  
16 notice of this Order by personal service or otherwise shall not, in active concert or participation  
17 with any Defendant or Relief Defendant, directly or indirectly destroy, alter, or dispose of in any  
18 manner, any Records relating to the business activities and business and personal finances of any  
19 Defendant or Relief Defendant.

20 Furthermore, any such financial or brokerage institution, business entity, or person that  
21 receives actual notice of this Order and holds, controls, or maintains custody of any account or  
22 Asset titled in the name of, held for the benefit of, or otherwise under the control of any  
23 Defendants and Relief Defendants, or has held, controlled, or maintained custody of any such  
24 account or Asset of any Defendants or Relief Defendants at any time since **June 15, 2015**, shall  
25 not, in active concert or participation with Defendants or Relief Defendants, deny a request by  
26 CFTC to inspect all Records pertaining to every account or Asset owned, controlled, managed, or  
27 held by, on behalf of, or for the benefit of Defendants or Relief Defendants, including, but not  
28 limited to, originals or copies of account applications, account statements, signature cards,

1 checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit  
2 instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. As an  
3 alternative to allowing inspection of Records, a financial or brokerage institution, business entity,  
4 or other person may provide copies of Records requested by CFTC.

5 D. Persons Bound By this Order

6 This Order is binding on Defendants and Relief Defendants, as well as any person who  
7 receives actual notice of this Order by personal service or otherwise and is acting in the capacity  
8 of an officer, agent, servant, employee, or attorney of Defendants or Relief Defendants, or is in  
9 active concert or participation with Defendants or Relief Defendants.

10 E. Service of Order and Assistance of United States Marshals Service and/or  
11 Other Law Enforcement Personnel

12 Copies of this Order may be served by any means, including via email, facsimile  
13 transmission, certified mail, or UPS, upon any financial institution or other entity or person that  
14 may have possession, custody, or control of any Records or Assets of any Defendant or Relief  
15 Defendant, or that may be subject to any provision of this Order.

16 The Court specially appoints the following persons or agencies to effect service: Margaret  
17 Aisenbrey, Clemon Ashley, J. Alison Auxter, Anthony Biagioli, Jennifer Chapin, Lauren Fulks,  
18 Rachel Hayes, Rebecca Jelinek, Jeff Le Riche, Charles Marvine, Jo Mettenburg, Christopher  
19 Reed, Elsie Robinson, Thomas Simek, Allison Sizemore, Nicholas Sloey, Brett Shanks, and  
20 Stephen Turley, and representatives of the United States Marshals Service, the Federal Bureau of  
21 Investigation (“FBI”), and California state or local law enforcement personnel.

22 The Court further authorizes the United States Marshals Service, the FBI, and California  
23 state or local law enforcement personnel to: (a) accompany and assist representatives of CFTC in  
24 the service and execution of the Summons, Complaint, and this Order on the Defendants and  
25 Relief Defendants; and (b) help maintain lawful order while representatives of CFTC inspect  
26 Records as provided in this Order. Nothing in this Order shall limit in any way any other lawful  
27 activities undertaken by the FBI with respect to Defendants or Relief Defendants in connection  
28 with any other proceeding.

1 F. Service on CFTC

2 Defendants and Relief Defendants shall comply with all filing and service rules, as set  
3 forth in Federal Rule of Civil Procedure 5 and Local Rules 133 and 135. To the extent  
4 conventional service of any documents on CFTC is appropriate under the rules, such service shall  
5 be effected by delivering a copy to **Jo E. Mettenburg, Chief Trial Attorney, Division of**  
6 **Enforcement, Commodity Futures Trading Commission, 4900 Main Street, Suite 500,**  
7 **Kansas City, Missouri 64112**, by e-mail, personal delivery, or courier service (such as Federal  
8 Express or United Parcel Service) only.

9 G. Order to Show Cause on Preliminary Injunction and Expedited Discovery

10 Defendants and Relief Defendants are ordered to show cause in writing not later than July  
11 10, 2020, as to why an Order for Preliminary Injunction should not be granted pending the  
12 remainder of this litigation. Such briefing shall be filed and served by the aforementioned date.  
13 The CFTC may file and serve a reply not later than July 17, 2020.

14 The CFTC's additional request for expedited discovery is also GRANTED. In advance of  
15 CFTC's deadline to file and serve reply briefing in support of an order granting a preliminary  
16 injunction, the parties may conduct expedited discovery, and the prohibition upon discovery  
17 before the early meeting of counsel pursuant to Rule 26(f), in accordance with Rule 26(d), is  
18 removed. Specifically, CFTC may take depositions of Defendants John Black, Chris Mancuso,  
19 Joseph Tufo, and John Glenn, and Relief Defendants Herbert Caswell, Anne Mancuso, and Tyler  
20 Mancuso, subject to two calendar days' notice pursuant to Rule 30(a); that notice may be given  
21 personally, by facsimile, or by electronic mail; and, if necessary, any deposition may last more  
22 than seven hours but no more than eight hours in one day, and no more than two days.

23 H. Waiver of Bond Requirement

24 As an agency of the United States of America, and pursuant to 7 U.S.C. § 13a-1(b) (2018)  
25 and Federal Rule of Civil Procedure 65(c), CFTC is not required to post a security bond in this  
26 matter.

27 I. Rights of Affected Parties

28 Pursuant to Local Rule 231(c)(8) and Federal Rule of Civil Procedure 65(b), any party

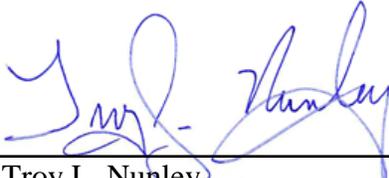
1 affected by this Order shall have the right to apply to the Court for modification or dissolution on  
2 two (2) days' notice or such shorter notice as the Court may allow.

3 J. Force and Effect

4 In light of the voluminous briefing and supporting documents submitted by CFTC in  
5 support of its Motion for SRO, the Court finds good cause exists to extend the expiration deadline  
6 of the SRO to permit sufficient briefing and consideration of the issues. Fed. R. Civ. P. 65(b)(2)  
7 (permitting district court to extend expiration deadline of temporary restraining order for good  
8 cause). Accordingly, the SRO shall remain in effect for 28 days, or until an order on CFTC's  
9 request for preliminary injunction issues, whichever is sooner. This Court retains jurisdiction of  
10 this matter for all purposes.

11 IT IS SO ORDERED.

12 DATED: July 2, 2020

  
\_\_\_\_\_  
Troy L. Nunley  
United States District Judge

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28