**UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

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| **COMMODITY FUTURES TRADING COMMISSION,** | ) | |
| **Plaintiff,** | ) | **Civil Action No.** |
| **v.** | ) | **COMPLAINT FOR INJUNCTIVE RELIEF, RESTITUTION, CIVIL MONETARY PENALTIES, AND OTHER EQUITABLE RELIEF UNDER THE COMMODITY EXCHANGE ACT** |
| **KELVIN OSCAR RAMIREZ,** | ) | |
| **Defendant.** | ) | |

Plaintiff, Commodity Futures Trading Commission ("CFTC"), an independent federal agency, by and through its attorneys, alleges as follows:

## I. SUMMARY

1. From as early as 2015 through the present, (the "Relevant Period"), Kelvin Oscar Ramirez ("Ramirez" or "Defendant") defrauded members of the public by fraudulently soliciting them to (1) invest in commodity pools that purportedly trade in retail foreign currency ("forex"), and (2) trade forex through accounts managed by Defendant, and then misappropriating the funds provided to him for these purposes.

2. Defendant solicited and continues to solicit participants for his forex pools ("pool participants") and clients for individual "privately" managed forex trading accounts ("private account clients") using social media, including www.instagram.com ("Instagram"); text and web-app messaging; email; and other forms of electronic and telephonic communication. The solicitations evoke a sense of urgency lest potential pool participants and private account clients lose out on limited openings, and contain material misrepresentations and omissions. Among other falsehoods, the solicitations tout Defendant's hundreds of thousands of dollars in weekly

forex trading profits; a lavish lifestyle funded through his profits; his growing multi-million dollar personal bank balance (purportedly over $11 million by June 2018); and a managed forex trading pool worth millions of dollars. And, with virtually no mention of associated trading risk, the solicitations promise pool participants and private account clients the return of their principal plus extravagant profits paid periodically during the investment term.

3. Defendant solicited pool participants and private account clients to pay him directly, and received more than $551,000 from at least 140 people. Dozens of others ("subscribers") paid Defendant more than $23,000 to subscribe to his purported forex trading education and signals service. In addition to failing to return pool participants and private account clients their principal and not paying them their promised returns, Defendant misappropriated virtually all of the original funds paid to him.

4. In soliciting pool participants and private account clients for his forex pools and managed individual forex accounts, Defendant made no attempt to determine if they were eligible contract participants ("ECPs")—i.e., persons with significant risk capital—and many, if not all, of Defendant's participants and clients were not.

5. By this conduct and the conduct further described herein, Defendant has engaged, is engaging, and/or is about to engage in acts and practices in violation of Sections 4b(a)(2)(A)-(C) and 4*o*(1)(A) and (B) of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 6b(a)(2)(A)-(C), 6*o*(1)(A), (B) (2012), and Commission Regulation ("Regulation") 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3) (2018).

6. In addition to the above-described illegal conduct, throughout the Relevant Period Defendant failed to register and properly operate as a commodity pool operator ("CPO"), thereby violating Sections 2(c)(2)(C)(iii)(I)(cc) and 4m(1) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc),

6m(1) (2012), and Regulations 4.20, 4.21, 4.22, and 5.3(a)(2)(i), 17 C.F.R. §§ 4.20, 4.21, 4.22, 5.3(a)(2)(i) (2018).

7. In addition to the above-described illegal conduct, throughout the Relevant Period Defendant failed to register and properly function as a commodity trading advisor ("CTA"), thereby violating Sections 2(c)(2)(C)(iii)(I)(bb) and 4m(1) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(bb), 6m(1) (2012), and Regulations 4.30(a), 4.31, and 5.3(a)(3)(i), 17 C.F.R. §§ 4.30(a), 4.31, 5.3(a)(3)(i) (2018).

8. Unless restrained and enjoined by this Court, Defendant will likely continue to engage in the acts and practices alleged in this Complaint, or in similar acts and practices, as described more fully below.

9. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), the CFTC brings this action to enjoin Defendant's unlawful acts and practices, to compel his compliance with the Act and Regulations, and to enjoin him from engaging in commodity-related activity. In addition, the CFTC seeks civil monetary penalties, restitution, and remedial ancillary relief, including, but not limited to, disgorgement, pre- and post-judgment interest, rescission, and such other and further relief as the Court may deem necessary and appropriate.

## II. JURISDICTION AND VENUE

10. The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331 (2012) (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (2012) (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 of the Act, 7 U.S.C. § 13a-1 (2012), provides that United States district courts possess jurisdiction to hear actions brought by the CFTC for injunctive relief or to enforce compliance with the Act whenever it shall appear to the CFTC that such 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. Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (2012), provides the CFTC with jurisdiction over the forex solicitations and transactions at issue in this action.

11. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e) because Defendant resides in this District, transacts or transacted business in this District, and certain transactions, acts, practices and courses of business alleged in this Complaint occurred or are occurring, or are about to occur within this District, among other places.

## III. THE PARTIES

12. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1-26 (2012), and the Regulations promulgated thereunder, 17 C.F.R. pts. 1-190 (2018). The CFTC maintains its principal office at Three Lafayette Centre, 1155 21st Street NW, Washington, D.C. 20581.

13. Defendant **Kelvin Oscar Ramirez** is an individual who resides in Houston, Texas. He has identified himself on social media as the CEO of 1T1M, a forex trader, and an investment manager. Ramirez has never been registered with the CFTC.

## IV. FACTS

### A. Defendant Fraudulently Solicited Members of the Public for his Forex Trading Services

14. Throughout the Relevant Period, Defendant used multiple forms of electronic communication, including phone, text messaging, and app- and web-based social media platforms, to fraudulently market himself to the public as a highly successful forex trader who consistently earned huge profits trading forex in margined accounts. He did so in order to recruit

paying clients for his forex education and trading signal service, forex pools, and individually-managed private forex accounts. The social media platforms include publicly-accessible Instagram accounts that Defendant operated under various names, such as "forex_account_manager – account_management," "accnt_management," and "investment_manager01," and a private Slack group called "1trade1million" that Defendant hosted to communicate with his pool participants and private account clients as well as his forex education/signals service clients.

15. For example, Defendant posted screenshots of purported off-shore forex trading accounts that he owned showing highly profitable trading—e.g., profits of over $100,000 in a single day—and account balances topping $1 million. Another social media post boasted that he earned on average $20,000 to $50,000 per night trading forex.

16. Defendant posted screenshots of his personal bank account at Chase Bank and, later, Bank of America showing balances of $8,967,258 in March 2016, $10,815,405 in October 2016, and $11,281,543 by June 2018.

17. Defendant boasted of a luxurious lifestyle—multiple real estate properties, expensive automobiles, vacations—all purportedly funded by his forex trading profits.

18. Defendant claimed that both he and his family were financially secure because his forex trading earned him over $500,000 per month.

19. Moreover, Defendant repeatedly assured his prospective and existing pool participants and private account clients that he could achieve the same success for them.

20. Defendant's representations about his forex trading success were false.

21. During the Relevant Period, Defendant never opened a forex trading account at any registered domestic forex broker. The screenshots of his purported off-shore trading

accounts were doctored by Defendant to falsely show actual trading—and profits from that trading—that never took place. When one of Defendant's clients shared some of these screenshots with one of the off-shore forex brokers, the broker told the client that the forex trades and dollar amounts shown in the screenshots were fabricated or could be associated with a demo account, rather than a real trading account. Further, Defendant's Chase and Bank of America account records show a total of only $15,470 ever going to a forex broker during the Relevant Period, $10,000 of which was eventually returned to his bank account.

22. The screenshots of Defendant's bank account that he posted showing a balance in the millions of dollars were also doctored by Defendant. During the period his Chase and Bank of America bank accounts were open between December 2014 to May 2017 and April 2017 to at least August 2018, respectively, the daily balance in those accounts never exceeded $135,000.

**B. Defendants' Forex Education and Trading Signal Service**

23. Defendant's social media marketing in 2015 and most of 2016 focused on soliciting customers to subscribe to his forex training and signal services for which Defendant charged a fee of $150 or more.

24. To this end, his social media posts frequently included testimonials from people purporting to have profited by following his trading advice along with solicitations such as "make your yearly salary in a month" and "you can be making $7,000 withdrawals for fun too." Another social media post boasted that he had turned some of his clients into "6 figure earners within months" and "helped people quit their 9-5 jobs." After subscribing to this service, Defendant invited subscribers to access Defendant's "1trade1million" Slack group where Defendant communicated with them.

25. In response to Defendant's misrepresentations about his forex trading success and ability to turn his subscribers into successful traders, dozens of people sent funds to Defendant to subscribe to his forex training and signal services.

26. In fact, Defendant rarely conducted any forex training sessions or sent trading signals to his subscribers.

**C. Defendants' Forex Trading Pools**

27. In October 2016, Defendant's marketing emphasis shifted to soliciting members of his Slack group and his followers on Instagram to participate in an investment pool that he would manage in 2017 (the "2017 Pool") that would trade leveraged or margined forex contracts. He offered this to those "looking to invest safely and a ROI for your money!!!!" The day after posting this offer on social media, Defendant posted that all the spots in the 2017 Pool were filled in less than half a day so he "open[ed] up a 2nd group last night [with] limited spot[s] available [and once that filled he would] not open another one!" On December 21, 2016, Defendant announced on Instagram that pool participants who invested before the end of the year would have their investment doubled as a "gift to …fellow investors."

28. Defendant told prospective participants that one "spot" in the 2017 Pool would cost $1,000 and that, beginning a short period after the initial investment, each spot would pay out $2,000 or more in weekly profits for an entire year. Defendant further stated that at the end of the year, any remaining money in the 2017 Pool would be split between Defendant and his participants, with the latter receiving 75 percent of those funds. Defendant told one prospective participant that a $1,000 investment in his fund two years ago was now worth $200,000, and he promised to pay this prospective participant $200,000 over time per spot purchased.

29. In response to Defendant's misrepresentations about his forex trading success and promises of huge returns, dozens of people sent funds to Defendant to participate in the 2017 Pool.

30. Throughout 2017 and into 2018, Defendant regularly announced on social media what he falsely claimed to be the 2017 Pool's trading profits. These postings included doctored screenshots of his purported forex broker accounts and purported to show weekly trading profits from tens of thousands to hundreds of thousands of dollars. On November 11, 2017, Defendant announced on Instagram that each 2017 Pool participant's investment "just hit 6 figures."

31. On September 28, 2017, Defendant announced on Instagram that he was starting another forex pool (the "2018 Pool") under the same general terms as the 2017 Pool. He said he was starting the second pool for those who have "seen the profits that I am making in the first group investment [and were] left out." In a December 10, 2017 social media post announcing 2017 Pool weekly profits of $868,246, Defendant added a plug for the 2018 Pool, stating, "I only make 1 group investment per year and 2018 might be the last...So if you were to [sic] late for my 1st account management and you were just sitting all year looking at the profits we were making [n]ow is your chance!"

32. In response to Defendant's misrepresentations about his forex trading success and promises of huge returns, dozens of people sent funds to Defendant to participate in the 2018 Pool.

33. In soliciting participants for the 2017 and 2018 Pools, Defendant couched his offer as a limited opportunity and urged people to invest before all of the spots were filled. In addition, Defendant offered special limited promotions to induce people to join the pool,

including a promotion in which Defendant would supposedly match the investments of the first fifteen pool participants.

34. Defendant did not operate the 2017 and 2018 Pools as cognizable legal entities separate from himself.

**D. Defendant's "Private" Individually Managed Forex Accounts**

35. By the end of 2016, Defendant began leveraging his false claims of forex trading success and personal fortune to aggressively solicit private account clients by phone, text message, and on social media. As opposed to the pools, this time Defendant offered the opportunity for people to have their own individual leveraged or margined forex accounts "privately" managed by Defendant.

36. For example, Defendant's social media posts touted exaggerated investment returns and trading profits Defendant claimed to have earned for his existing private account clients, and a number of these posts included purported testimonials from satisfied clients. For example, a September 12, 2017, post included a screenshot of a message from a purported private account client claiming to have made over $9,000 after just two weeks of Defendant managing her account. In the post, Defendant described the investment as "1% risk and 8% gain per week" translating to "annually [sic] income of 216k that she created for herself by investing."

37. Another post referred to a new private account client who made a $60,000 initial investment under a two year contract who was to earn an annual return on investment of $180,000. Still another post claimed that a private account client was investing $700,000 with Defendant in a managed account and that the account would return around $450,000 in monthly profits with "a very very very very safe risk ratio."

38. Defendant told one prospective private account client, who eventually invested, that the minimum investment for a private account was $10,000 with no withdrawals for the first

three months so Defendant could grow the capital before paying out profits. A written contract sent to this client by Defendant referenced that Defendant would be trading forex on margin or using leverage, that the return on investment would be 25 percent, and that at the end of one year the client would receive the trading profits, minus 25 percent for Defendant's fee.

39. Another client, who sent $50,000 to Defendant in November 2017 to open a private managed account, was told by Defendant that her investment would be worth $230,000 by January 2018 and that starting in February 2018, she would receive payouts of at least $40,000 each week for a year.

40. As with the pools, Defendant urged prospective private account clients to sign up without delay. For example, he told one client to send her money "asap" saying, "the faster I get the money...[t]he faster I can trade..." and "the sooner I get [your money]... the sooner I can trade it and give you payouts."

41. In response to Defendant's misrepresentations about his forex trading success and promises of huge returns, multiple people sent funds to Defendant to open individually managed forex accounts.

### E. Defendant Downplayed Risk and Guaranteed His Pool Participants' and Private Account Clients' Investments

42. In his solicitations of prospective pool participants and private account clients, Defendant made little if any mention of risk. For some pool participants and private account clients, Defendant never made any mention of risk. For others, the only mention of risk Defendant ever made was in the form of boilerplate language contained in an investment agreement that he sent to some of his pool participants and private account clients, such as:

> Before i [sic] state all the agreements that we made, by law it's required that i [sic] notify and remember [sic] all my investors that: Trading foreign exchange on margin carries a high level of risk, and may not be suitable for all investors. Past performance is not indicative of future results. The high degree of leverage can

> work against you as well as for you. Before deciding to invest in foreign exchange you should carefully consider your investment objectives, level of experience, and risk appetite. The possibility exists that you could sustain a loss of some or all of your initial investment and therefore you should not invest money that you cannot afford to lose. You should be aware of all the risks associated with foreign exchange trading! All investors should be aware of all possible risks that the market pose [sic]!

43. Any statements that Defendant made regarding risk were undercut by the guarantees that he made to private account clients and pool participants. After providing the boilerplate risk language in the written agreement described above, the agreement went on to state that, in the event of loss, Defendant will refund the client's initial investment in full if any trade exceeded a specified risk level.

44. Defendant also stated on social media that he guarantees all of his pool participants' and private account clients' principal investments based on his own funds, which he represented to be in the millions of dollars. For pool participants, he guaranteed the payout of weekly profits and claimed that all of his participants' investments "are secured" because Defendant "personally make[s] over 6 figures monthly." He told one of his private account clients that his account would "only have a 2% risk management during trading" and that if the risk were higher than 2 percent, then the client would be entitled to a full refund of his principal investment. He guaranteed the $50,000 investment of another private account client telling her that he was one "of the very few managers that can guarantee peoples [sic] investment with my personal money" and that his larger clients' investments are "100% secured even with losses."

45. In soliciting and accepting funds from pool participants and private account clients, Defendant never inquired about their net worth or amount of discretionary investments.

46. Many, if not all, of Defendant's pool participants and private account clients were not ECPs.

### F. Defendant Failed To Provide Required Disclosure Documents and Account Statements

47. Defendant failed to provide many pool participants and private account clients with any form of written contract documenting the terms of investment, even when requested to do so.

48. Defendant never provided to his pool participants any type of Disclosure Document required to be provided pursuant to Regulation 4.21, 17 C.F.R. § 4.21 (2018), or any type of Account Statement or Annual Report required to be provided pursuant to Regulation 4.22, 17 C.F.R. § 4.22 (2018).

49. Defendant never provided to his private account clients any type of Disclosure Document required to be provided pursuant to Regulation 4.31, 17 C.F.R. § 4.31 (2018).

### G. Defendant Received More than $574,000 from Pool Participants, Private Account Clients, and Subscribers and Misappropriated These Funds

50. In response to Defendant's fraudulent misrepresentations and omissions, at least 140 pool participants and private account clients sent Defendant more than $551,000 for trading leveraged forex contracts on their behalf as part of a pooled investment or individually managed accounts. In addition, at least 92 individuals sent Defendant more than $23,000 to subscribe to his forex trading education and signals services.

51. Defendant instructed his pool participants and private account clients to send their funds directly to him in an account in Defendant's name. All of these funds were deposited in Defendant's personal bank accounts and commingled with Defendant's own funds. The funds were generally sent to Defendant by wire, direct deposit, or using money transfer services linked to Defendant's email address.

52. Very little if any of the pool participants' and private account clients' funds were used to trade forex.

53. Rather, Defendant used the funds for his own purposes. For example, during the Relevant Period:

- Defendant transferred approximately $278,000 to members of his family and friends;
- Defendant made cash withdrawals totaling an additional approximately $193,000, which included two single payments of $30,000 and $24,000 each to automobile dealerships;
- Defendant made 1,286 check card purchases totaling approximately $93,000 at places such as Golf Mayan Entertainment, In The Shop (Automotive), G Force Motor Sports, High Tech Auto Sound, Sun & Ski Sports, Vida Vacations, Michael Kors, Fireworks Super, Jewelry Emporium, and Olive Garden;
- Defendant made 323 point-of-sale debit purchases totaling approximately $19,000 at places such as Best Buy, Sunglass Hut, Galaxy Fireworks, Tires By Design, King Tire, Academy Sports, Aldo US, O'Reilly Auto, and Shell;
- Defendant made 327 internet check card and internet purchases totaling approximately $48,000 at places such as American Airlines, Cancun Yacht, G Force Motor Sports, AT&T, Our Vacation Center, On Star Data Plan, and Red Box DVD Rental.

54. Defendant returned a total of less than $7,000 to his pool participants and private account clients, despite repeated requests from many of them for him to do so. In response to their requests, Defendant repeatedly promised to return the funds and made excuses for his inability to do so, including bank transfer limits, litigation holds on his bank accounts, and family illnesses and other personal issues. When some pool participants and private account clients

persisted in demanding return of their funds, Defendant eventually stopped responding to them and kicked them out of his Slack group.

**H. Defendant's Admitted Fraud Is Ongoing**

55. On or about July 19, 2018—in an effort to appease his pool participants and private account clients aggrieved at not receiving payments as promised and suspecting they had been defrauded—Defendant posted a video on Slack purporting to show the 2017 Pool trading balance held at an off-shore forex broker. After pool participants contacted the broker to inquire whether such a live funded trading account existed and were advised it did not, they confronted Defendant. In a Facebook message posted on Slack on or about July 20, 2018, Defendant confirmed "that it was all a lie and [he had] lost or spent all the money."

56. Nevertheless, by July 22, 2018, Defendant had shut down his most recent Instagram account used to communicate with existing and potential pool participants and private account clients and opened a new one labeled "investment_manager01." This new Instagram account had 5,470 followers on or about July 22, 2018. Under the heading "Product/Service," the account states: "Forex Trader! Investment manager! Monthly ROI 25% Contact for investment information."

57. One post to this new Instagram account contained yet another screenshot of an account statement from Defendant's purported off-shore forex trading account along with the following text:

> Last month was great! 347k for the whole month! Before anyone gets confused, this is last months [sic] broker statement! If you are intreated [sic] in investing in to a account Management. You can send me a email or text! Group accounts start at $1,000.00+ in which I have one open right now. Private accounts start at $5,000.00! My ROI is set at 25% monthly and my fee is 25%...

## V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS

### COUNT I

### FRAUD IN CONNECTION WITH RETAIL FOREX CONTRACTS

**Violations of Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (2012), and Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3) (2018)**

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

59. 7 U.S.C. § 6b(a)(2)(A)-(C) makes it unlawful for any person to (A) cheat or defraud or attempt to cheat or defraud another person, (B) willfully to make a false report or statement to another person, or (C) willfully to deceive or attempt to deceive another person by any means whatsoever in connection with any retail forex transaction.[1] Similarly, 17 C.F.R. § 5.2(b)(1)-(3) makes it unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce, to (1) cheat or defraud or attempt to cheat or defraud another person, (2) willfully to make a false report or statement to another person, or (3) willfully to deceive or attempt to deceive another person by any means whatsoever in connection with any retail forex transaction.

60. As set forth above, during the Relevant Period, Defendant violated and continues to violate 7 U.S.C. § 6b(a)(2)(A)-(C) and 17 C.F.R. § 5.2(b)(1)-(3) by, among other things, (i) misappropriating pool participant and private account client funds; (ii) making, causing to be made, and distributing reports or statements to existing and prospective pool participants and private account clients that contained false information, and (iii) fraudulently soliciting existing and prospective pool participants, private account clients, and subscribers, all in connection with

[1] 7 U.S.C. § 6b(a)(2)(A)-(C) apply to forex transactions as if they were futures contracts pursuant to Section 2(c)(2)(C)(iv) of the Act, 7 U.S.C. § 2(c)(2)(C)(iv) (2012).

retail forex transactions, including the purported trading of retail forex contracts conducted or to be conducted by Defendant on behalf of pool participants and private account clients.

61. Each act of misappropriation, misrepresentation or omission of material fact, and issuance of a false report, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. § 6b(a)(2)(A), (B), and/or (C) and 17 C.F.R. § 5.2(b)(1), (2), and/or (3).

## COUNT II

## FRAUD BY A COMMODITY TRADING ADVISOR AND COMMODITY POOL OPERATOR

### Violations of Section 4*o*(1)(A) and (B) of the Act, 7 U.S.C. § 6*o*(1)(A), (B) (2012)

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

63. 7 U.S.C. § 6*o*(1)(A) and (B), in relevant part, makes it unlawful for CTAs and CPOs, by use of the mails or any other means of interstate commerce, directly or indirectly, to: (A) employ any device, scheme, or artifice to defraud any client or pool participant; or (B) engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client or pool participant.

64. 7 U.S.C. § 6*o*(1)(A) and (B) applies to CTAs and CPOs engaging in retail forex transactions pursuant to Section 2(c)(2)(C)(ii) and (vii) of the Act, 7 U.S.C. § 2(c)(2)(C)(ii) and (vii) (2012).

65. 7 U.S.C. § 6*o*(1)(A) and (B) applies to all CTAs and CPOs, whether registered, required to be registered, or exempted from registration.

66. Section 1a(12) of the Act, 7 U.S.C. § 1a(12) (2012), defines a CTA as "any person who for compensation or profit, engages in the business of advising others . . . as to the

value or advisability of trading in [ forex]." Similarly, Regulation 5.1(e)(1), 17 C.F.R. § 5.1(e)(1) (2018), defines a CTA as "any person who exercises discretionary trading authority or obtains written authorization to exercise discretionary trading authority over any account for or on behalf of any person that is not an [ECP] in connection with retail forex transactions."

67. 7 U.S.C. § 1(a)(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 . . . for the purpose of trading in . . . [retail forex]." Similarly, 17 C.F.R. § 5.1(d)(1) defines a CPO as " any person who operates or solicits funds . . . for a pooled investment vehicle that is not an [ECP], and that engages in retail forex transactions."

68. In the case of an individual, 7 U.S.C. § 1a(18)(A)(xi) defines ECP to mean a person "acting for its own account . . . who has amounts invested on a discretionary basis, the aggregate of which is in excess of – (I) $10,000,000; or (II) $5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual." In the case of a commodity pool, 7 U.S.C. § 1a(18)(A)(iv)(II) provides that a pool is not an ECP if any if its pool participants are not.

69. As set forth above, during the Relevant Period, Defendant, acted and continues to act as a CTA by engaging in the business of advising others and by exercising discretionary trading authority or obtaining written authorization to exercise discretionary trading authority over accounts for or on behalf of persons, including persons who are not ECPs, in connection with retail forex transactions.

70. As set forth above, during the Relevant Period, Defendant acted and continues to act as a CPO by soliciting, accepting, or receiving funds from others, including persons who are not ECPs, while engaged in a business that is of the nature of an investment trust, syndicate, or other pooled investment vehicle, for the purpose of, among other things, conducting retail forex transactions.

71. As set forth above, Defendant violated and continues to violate 7 U.S.C. § 6*o*(1)(A) and (B), in that, by use of the mails or other means of interstate commerce, he employed or is employing a device, scheme or artifice to defraud existing and prospective pool participants and private account clients and/or engaged or is engaging in transactions, practices, or a course of business which operated or operate as a fraud or deceit upon existing and prospective pool participants and private account clients by, among other things, (i) misappropriating their funds; (ii) making, causing to be made, and distributing reports or statements to existing and prospective pool participants and private account clients that contained false information, and (iii) fraudulently soliciting existing and prospective pool participants and private account clients, all in connection with the purported trading of retail forex contracts conducted or to be conducted by Defendant on behalf of his pool participants and private account clients.

72. Each act of misappropriation, misrepresentation or omission of material fact, and issuance of a false report, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. § 6*o*(1)(A) and/or (B).

## COUNT III

## FAILURE TO REGISTER AS A COMMODITY TRADING ADVISOR AND COMMODITY POOL OPERATOR

**Violations of Sections 2(c)(2)(C)(iii)(I)(bb) and (cc), 4m(1) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(bb), (cc), 6m(1) (2012), and Regulation 5.3(a)(2)(i) and (3)(i), 17 C.F.R. § 5.3(a)(2)(i), (3)(i) (2018)**

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

74. 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb) and (cc) prohibits any person from exercising discretionary trading authority or obtaining written authorization to exercise trading authority over any account for or on behalf of a non-ECP (i.e., acting as a CTA) or operating or soliciting funds for a pooled investment vehicle for non-ECPs (i.e., acting as a CPO) in connection with retail forex transactions, unless registered with the CFTC, with certain exceptions not applicable to Defendant.

75. 17 C.F.R. § 5.3(a)(2)(i) and (3)(i) requires any retail forex CTA or CPO, as defined in Regulations 5.1(d)(1) and (e)(1), 17 C.F.R. §§ 5.1(d)(1), (e)(1) (2018), to register with the CFTC.

76. 7 U.S.C. § 6m(1) prohibits a CTA and CPO, unless registered as such with the CFTC, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CTA or CPO.

77. As set forth above, during the Relevant Period, Defendant acted and continues to act as an unregistered CTA by engaging in the business of advising others and by exercising discretionary trading authority or obtaining written authorization to exercise discretionary trading authority over accounts for or on behalf of persons who are not ECPs in connection with retail forex transactions, in violation of 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb) and 17 C.F.R. § 5.3(a) (3)(i).

78. As set forth above, during the Relevant Period, Defendant acted and continues to act as an unregistered CPO by soliciting, accepting, or receiving funds from others while engaged in a business that is of the nature of an investment trust, syndicate, or other pooled investment vehicle in connection with retail forex transactions, in violation of 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) and 17 C.F.R. § 5.3(a) (2)(i).

79. As set forth above, during the Relevant Period, Defendant used and continues to use the mails or instrumentalities of interstate commerce in connection with his business as a CTA and CPO, without being registered, in violation of 7 U.S.C. § 6m(1).

80. Each use of the mails or any means or instrumentality of interstate commerce by Defendant while acting as an unregistered CTA and CPO, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. § 6m(1).

## COUNT IV

## IMPROPER OPERATION OF A COMMODITY POOL

**Violations of Regulations 4.20, 4.21, and 4.22, 17 C.F.R. §§ 4.20, 4.21, 4.22 (2018)**

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

82. 17 C.F.R. § 4.20(a)(1), (b), and (c) provide, inter alia, that a CPO, whether or not registered or required to be registered, must (i) operate its pool as a legal entity separate from that of the pool operator, (ii) receive funds from pool participants in the pool's name, and (iii) avoid commingling pool participant funds with that of the CPO.

83. 17 C.F.R. § 4.21 requires a CPO, whether or not registered or required to be registered, to furnish prospective pool participants with a specified Disclosure Document prepared in accordance with Regulations 4.24 and 4.25, 17 C.F.R.§§ 4.24, 4.25 (2018), by no

later than the time the CPO delivers to the prospective participant a subscription agreement for the pool.

84. 17 C.F.R. § 4.22 requires a CPO, whether or not registered or required to be registered, to periodically distribute to pool participants specified Account Statements and Annual Reports.

85. Regulation 5.4, 17 C.F.R. § 5.4 (2018), mandates that Part 4 of the Regulations applies to any person required to be registered as a retail forex CPO under Part 5 of the Regulations.

86. As set forth above, during the Relevant Period, Defendant was required to be registered as a retail forex CPO.

87. As set forth above, during the Relevant Period, Defendant violated 17 C.F.R. §§ 4.20(a)(1), (b), and (c) by (i) not operating his pool as a separate legal entity from himself, (ii) failing to receive pool participants' funds in the name of a pool, and (c) commingling pool participants' funds with his own funds.

88. As set forth above, during the Relevant Period, Defendant violated 17 C.F.R. § 4.21 by failing to provide the required Disclosure Document to prospective pool participants.

89. As set forth above, during the Relevant Period, Defendant violated 17 C.F.R. § 4.22 by failing to provide the required periodic Account Statements and Annual Reports to pool participants.

90. Each failure to operate a pool as a separate legal entity from himself, each act of improper receipt and commingling of pool participant funds, each failure to provide the required Disclosure Document, and each failure to provide the required Account Statement and Annual

Report, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of 17 C.F.R. §§ 4.20(a)(1),(b) and (c), 4.21, and 4.22.

## COUNT V

## IMPROPER OPERATION AS A CTA

### Violations of Regulations 4.30(a) and 4.31, 17 C.F.R. §§ 4.30(a), 4.31 (2018)

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

92. 17 C.F.R. § 4.30(a) prohibits a CTA from soliciting, accepting, or receiving from an existing or prospective client funds in the CTA's name to purchase, margin, or guarantee any commodity interest of the client.

93. 17 C.F.R. § 4.31 requires a CTA, whether or not registered or required to be registered, to furnish prospective clients with a specified Disclosure Document prepared in accordance with Regulations 4.34 and 4.35, 17 C.F.R.§§ 4.34, 4.35 (2018), by no later than the time the CTA delivers to the prospective client an advisory agreement to direct or guide the client's account.

94. Regulation 5.4, 17 C.F.R. § 5.4 (2018), mandates that Part 4 of the Regulations applies to any person required to be registered as a retail forex CTA under Part 5 of the Regulations.

95. As set forth above, during the Relevant Period, Defendant was required to be registered as a retail forex CTA.

96. As set forth above, during the Relevant Period, Defendant violated 17 C.F.R. § 4.30(a) by soliciting, accepting, and receiving funds from existing and prospective private account clients in Defendant's own name for the purpose of purchasing, margining, guaranteeing or securing retail forex interests for them.

97. As set forth above, during the Relevant Period, Defendant violated 17 C.F.R. § 4.31 by failing to provide the required Disclosure Document to prospective clients.

98. Each act of improperly receiving client funds and each failure to provide the required Disclosure Document, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of 17 C.F.R. §§ 4.30(a) and 4.31.

## VI. RELIEF REQUESTED

WHEREFORE, the CFTC respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), and pursuant to the Court's inherent equitable powers, enter:

A. an order finding Defendant liable for violating Sections 2(c)(2)(C)(iii)(I)(bb) and (cc), 4b(a)(2)(A)-(C), 4m(1), 4*o*(1)(A) and (B) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(bb), (cc), 6b(a)(2)(A)-(C), 6m(1), 6*o*(1)(A), (B) (2012), and Regulations 4.20(a)(1), (b), and (c), 4.21, 4.22, 4.30(a), 4.31, 5.2(b)(1)-(3), and 5.3(a)(2)(i) and (3)(i), 17 C.F.R. §§ 4.20(a)(1), (b), (c), 4.21, 4.22, 4.30(a), 4.31, 5.2(b)(1)-(3), 5.3(a)(2)(i), (3)(i) (2018);

B. an order of permanent injunction restraining and enjoining Defendant and his affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons in active concert with them, who receive actual notice of such order by personal service or otherwise, from engaging in the conduct described above, in violation of 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(bb), (cc), 6b(a)(2)(A)-(C), 6m(1), 6*o*(1)(A), (B), and 17 C.F.R. §§ 4.20(a)(1), (b), (c), 4.21, 4.22, 4.30(a), 4.31, 5.2(b)(1)-(3), 5.3(a)(2)(i), (3)(i);

C. an order of permanent injunction restraining and enjoining Defendant and his affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons in active concert with them, from directly or indirectly:

a. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012));

b. entering into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2018)) for accounts held in the name of Defendant or for accounts in which Defendant has a direct or indirect interest;

c. having any commodity interests traded on Defendant's 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 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) (2018); and

g. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2018)), 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) (2018);

D. an order directing Defendant, 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 and Regulations as described herein, including pre-judgment and post-judgment interest;

E. an order directing Defendant, 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. an order directing Defendant, 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 Defendant and any of the pool participants and private account clients whose funds were received by Defendant as a result of the acts and practices that constituted violations of the Act and Regulations as described herein;

G. an order directing Defendant 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)(2012), 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 (2018), for each violation of the Act and Regulations, as described herein;

H. an order requiring Defendant to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2413(a)(2) (2012); and

I. an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Dated: January 14, 2019

Respectfully Submitted,

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