

**ENTERED**

January 29, 2019

David J. Bradley, Clerk

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

<b>COMMODITY FUTURES TRADING</b>	)	
<b>COMMISSION,</b>	)	
	)	<b>Civil Action No. 4:19-cv-140</b>
<b>Plaintiff,</b>	)	
	)	<b>ORDER OF</b>
<b>v.</b>	)	<b>PRELIMINARY INJUNCTION AND</b>
	)	<b>OTHER ANCILLARY RELIEF</b>
<b>KELVIN OSCAR RAMIREZ,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	
	)	

Plaintiff U.S. Commodity Futures Trading Commission (“Commission”) has moved, pursuant to Section 6c of the Commodity Exchange Act (“Act”), 7 U.S.C. § 13a-1 (2012), for a preliminary injunction against Defendant Kelvin Oscar Ramirez (“Defendant”) [D.E. 2] (i) enjoining him from violating the sections of the Act and Commission Regulations under which he has been charged in the Commission’s complaint [D.E. 1], and (ii) continuing the terms of the Order Granting Plaintiff’s Emergency Motion for an *Ex Parte* Statutory Restraining Order (“SRO”) entered by this Court on January 15, 2019 [D.E. 6].

The Court has considered any pleadings, declarations, exhibits, and memorandum filed in support of and in opposition to the Commission’s Motion for a Preliminary Injunction and Other Ancillary Relief, and now, being fully advised, finds as follows:

1. The Court possesses jurisdiction over the parties and over the subject matter of this action pursuant to 7 U.S.C. § 13a-1 (2012).
2. Venue properly lies in this District pursuant to 7 U.S.C. § 13a-1(e).
3. There is good cause to believe that Defendant has engaged in, is engaging in, or is about to engage in violations of the Act and Commission Regulations (“Regulations”), and that

this is the proper case for granting a preliminary injunction to preserve the *status quo*, protect the public from further loss and damage, and enable the Commission to fulfill its statutory duties.

4. Namely, the Commission has presented evidence that Defendant, acting as an unregistered commodity trading advisor (“CTA”) and commodity pool operator (“CPO”) in connection with retail forex contracts, engaged in, is engaging in, or is about to engage in fraud and improper operation of a commodity pool and as a CTA in violation of Sections 2(c)(2)(C)(iii)(I)(bb) and (cc), 4b(a)(2)(A)-(C), 4m(1), and 4o(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), 6o(1)(A), (B) (2012), and Regulations 4.20, 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, 4.21, 4.22, 4.30(a), 4.31, 5.2(b)(1)-(3), 5.3(a)(2)(i), (3)(i) (2018).

5. There is good cause to believe that, unless the terms of the SRO are continued, immediate and irreparable damage to the Court’s ability to grant effective final relief for Defendant’s clients in the form of monetary redress will occur from the sale, transfer, assignment, destruction, or other disposition by Defendant of assets or records or from limitations on the Commission’s continued ability to access Defendant’s records.

## I. DEFINITIONS

For the purposes of this Order, “Defendant” refers to Kelvin Oscar Ramirez, and any person insofar as he or she is acting in the capacity of an agent, servant, employee, or attorney of Defendant and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with Defendant. “Defendant” also refers to any d/b/a, successor, affiliate, subsidiary, or other entity owned, controlled, managed, or held by, on behalf of, or for the benefit of Kelvin Oscar Ramirez.

## II. PROHIBITED CONDUCT

**IT IS HEREBY ORDERED** that, until a final adjudication on the merits may be had, Defendant is restrained and enjoined from directly or indirectly:

- a. Cheating or defrauding (or attempting to cheat or defraud) another person, willfully making a false statement to another person, or willfully deceiving (or attempting to deceive) another person by any means in connection with any retail forex transaction in violation of 7 U.S.C. § 6b(a)(2)(A)-(C) and 17 C.F.R. § 5.2(b)(1)-(3);
- b. Employing a scheme to defraud or engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon any pool participant or client while acting as a CPO and/or CTA in violation of 7 U.S.C. § 6o(1);
- c. Exercising discretionary trading authority or obtaining written authorization to exercise trading authority over any account for or on behalf of a person who is not an “eligible contract participant” as defined in Section 1a(18)(A)(xi) of the Act, 7 U.S.C. § 1a(18)(A)(xi) (2012) (“ECP”) or operating or soliciting funds for a pooled investment vehicle for non-ECPs in connection with retail forex transactions, without being registered with the Commission as a CTA or CPO in violation of 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb), (cc), 6m(1), and 17 C.F.R. § 5.3(a)(2)(i), (3)(i);
- d. Operating improperly as a CPO by failing to operate a commodity pool as a separate legal entity from the CPO, failing to receive funds from pool participants in the pool’s name, commingling pool participant funds with the CPO’s funds, failing to furnish prospective pool participants with specified Disclosure

Documents, and pool participants with specified Account Statements and Annual Reports in violation of 17 C.F.R. §§ 4.20 4.21, 4.22; and,

- e. Operating improperly as a CTA by 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, and failing to furnish prospective clients with a specified Disclosure Document in violation of 17 C.F.R. §§ 4.30, 4.31.

### III. BOND NOT REQUIRED OF PLAINTIFF

**IT IS FURTHER ORDERED** that:

Because the Commission is an agency of the United States of America and has made a proper showing under 7 U.S.C. § 13a-1(b), this preliminary injunction is granted without bond. Accordingly, the Commission need not post a bond.

### IV. FORCE AND EFFECT

**IT IS FURTHER ORDERED** that:

This Order shall remain in full force and effect until further order of this Court and that this Court retains jurisdiction of this matter for all purposes. The Order Granting Plaintiff's Emergency Motion for an *Ex Parte* Statutory Restraining Order entered by this Court on January 15, 2019 shall remain in full force and effect until further order of this Court.

**IT IS SO ORDERED** at Houston, Texas on this 29<sup>th</sup> day of January, 2019.

  
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KEITH P. ELLISON  
UNITED STATES DISTRICT JUDGE