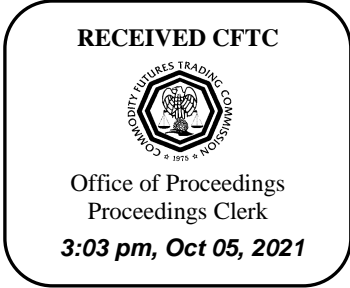


UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION



WESLEY M. JARRELL, II,
Complainant-Appellant,
v.
ROBERT LEE SPEARS, JR., and
LAKEFRONT FUTURES & OPTIONS LLC,
Respondent-Appellees.

CFTC Docket No. 18-R027

OPINION AND ORDER

This case raises a jurisdictional question as to the scope of Section 14 of the Commodity Exchange Act (CEA), 7 U.S.C. § 18(a)(1), which creates the agency’s reparations program allowing for certain claims seeking monetary recovery for “[a]ny person complaining of any violation of any [CEA] provision” or “any rule, regulation, or order issued pursuant” thereto for violations committed “by any person who is registered under this chapter.” Specifically, the question presented is whether the Commission’s reparations jurisdiction extends to a party who is registered in one “capacity” as to a particular entity but whose alleged violation was committed while acting solely on behalf of a different, non-registered entity. Based on the plain language of Section 14, as confirmed by that provision’s structure, history, and purpose and consistent with longstanding Commission practice, the answer is yes.

We therefore reverse the dismissal of the fraudulent-solicitation claim against Respondent Robert Lee Spears, Jr., a registered person. To the extent that Spears alternatively seeks to challenge his liability on the merits, such arguments should be raised, if at all, on

remand. See 17 C.F.R. § 12.406(a) (“On review, the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial decision.”).

THE SECTION 14 REPARATIONS PROGRAM

Congress originally enacted Section 14 as part of the Commodity Futures Trading Commission Act of 1974, Pub. L. No. 93-463, 88 Stat. 1389, envisioning an alternative dispute-resolution process simpler and less expensive than full-dress litigation but more formal than existing industry arbitration procedures, “analogous to the operation of a small claims court.” S. Rep. No. 95-850, at 16 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 2087, 2104; *Flaxman v. CFTC*, 697 F.2d 782, 785 n.7 (7th Cir. 1983) (“Reparations proceedings were created by Congress in order to permit commodity customers to bring private causes of action before the Commission against Commission registrants.”). With roots in the Interstate Commerce Act of 1887 and the Packers and Stockyards Act of 1921, the CFTC’s reparations program reflected a “noble experiment” in administrative law. *CFTC Reauthorization: Hearings on H.R. 5447 Before the Subcomm. on Conservation, Credit, and Rural Dev. of the H. Comm. on Agric.*, 97th Cong. 115 (1982) [hereinafter *CFTC Reauthorization: Hearings on H.R. 5447*] (supplemental statement of Philip McBride Johnson, Chairman, CFTC). To this day, Section 14’s dispute-resolution process remains “unusual, although not unique, in the statutory lexicon of the federal government.” Marianne K. Smythe, *The Reparations Program of the Commodity Futures Trading Commission: Reducing Formality in Agency Adjudication*, 2 Admin. L.J. 39, 40–41 (1988) (footnote omitted) [hereinafter *The Reparations Program of the Commodity Futures Trading Commission*]; see also Verity Winship, *Public Agencies and Investor Compensation: Examples from the SEC and CFTC*, 61 Admin. L. Rev. 137, 147–152 (2009); Kenneth M. Raisler & Edward S. Geldermann, *The CFTC’s New Reparation Rules: In Search of A Fair*,

Responsive, and Practical Forum for Resolving Commodity-Related Disputes, 40 Bus. Law. 537 (1985) [hereinafter *The CFTC's New Reparation Rules*]; Arthur L. Shipe, *Private Litigation Before the Commodity Futures Trading Commission*, 33 Admin. L. Rev. 153 (1981).

The universe of potential claims that private litigants can bring in a reparations action, while broad, is not unlimited. As relevant here, the scope of Section 14 currently provides:

Any person complaining of any violation of any provision of this chapter, or any rule, regulation, or order issued pursuant to this chapter, by any person who is registered under this chapter may, at any time within two years after the cause of action accrues, apply to the Commission for an order awarding ... actual damages proximately caused by such violation.

7 U.S.C. § 18(a)(1). But the reach of the Commission's reparations jurisdiction has not always been so. Section 14 originally provided a forum for relief for CEA violations committed "by any person registered" and required an "opportunity for hearing" for any complaint when the "damages claimed exceed the sum of \$2,500." 7 U.S.C. § 18(a), (c) (Supp. IV 1974). In amendments enacted as part of the Futures Trading Act of 1978, Pub. L. No. 95-405, 92 Stat. 865, sec. 21, Congress altered Section 14 in two respects. First, Congress raised the monetary threshold entitling a complainant to a hearing to \$5,000, thereby relaxing the procedural formality of smaller-sum disputes. 7 U.S.C. § 18(c) (Supp. II 1978). Second, ratifying a then-recent Commission opinion, Congress expressly expanded the CFTC's jurisdiction to include as potential respondents in reparations "any person who is registered *or required to be registered*." *Id.* § 18(a) (emphasis added); *see also Stucki v. American Options Corp.*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. ¶ 20,559, Nos. R 77-59 & R 77-78, 1978 WL 478899 (CFTC Feb. 13, 1978). This expansion of Section 14 prevented unregistered parties from evading reparations liability for failing to register with the Commission.

Responding to certain administrability concerns, Congress reversed course in the Futures Trading Act of 1982, Pub. L. No. 97-444, 96 Stat. 2294, sec. 231 (1983). Immediately after first promulgating the rules implementing Section 14, 17 C.F.R. part 180, in 1976, the CFTC’s Office of Proceedings experienced a deluge of reparations filings brought about by “rampant” illegal sales activity involving London commodity options in the 1970s. Raisler & Geldermann, *The CFTC’s New Reparation Rules*, 40 Bus. Law., at 542. That increase in case load was followed by “another ground swell of unhappy commodity futures retail customers” in the wake of the 1980 crisis in the silver markets. Smythe, *The Reparations Program of the Commodity Futures Trading Commission*, 2 Admin. L.J., at 51. The upshot of these developments was a severe backlog of reparations cases: In 1979, there were only 68 cases decided out of the 343 docketed (19.8 percent); by 1982, those figures had ballooned to 230 out of 1,389 (16.6 percent). *See id.*

Then-Chairman Johnson proposed a legislative fix aimed to curb the “extensive delays” and “the assessment of uncollectible awards” against “ ‘outlaw’ firms or individuals,” which had resulted in a process that “actually operates as a disservice to those who have already been harmed, by apparently promising recovery, which as a practical matter cannot be had.” *CFTC Reauthorization: Hearings on H.R. 5447*, 97th Cong. 115–117. That proposal chiefly called for two things: First, broader rulemaking authority in lieu of statutorily specified procedures contingent on monetary thresholds; and second, for the elimination of reparations jurisdiction over parties not actually registered with the CFTC, who were harder to identify and less likely than their registered counterparts to be able to satisfy adverse monetary judgments. *See id.* By ceding its reparations jurisdiction over unregistered entities, the Commission would be able to prioritize the cases most likely to result in a successful outcome for claimants—those involving registered respondents.

Congress agreed on both counts, and the 1982 amendments supply the current language of Section 14 in relevant part. *See* 7 U.S.C. § 18(a) (2021) (providing for reparations jurisdiction over violations committed “by any person who is registered under this chapter” only); *id.* §18(b) (granting the Commission authority to “promulgate such rules, regulations, and orders as it deems necessary or appropriate for the efficient and expeditious administration of this section”).

The Commission has never previously addressed the question presented here: whether any particular nexus between an alleged wrongdoer’s conduct and registration status is required for purposes of Section 14 reparations jurisdiction.

FACTUAL AND PROCEDURAL HISTORY

Appellant Wesley M. Jarrell, II, a non-practicing attorney and real-estate investor, brought the underlying reparations complaint against a mix of natural persons and corporate entities, some registered with the Commission and some not, seeking more than \$65,000 in damages for fraudulent solicitation and unauthorized trading. R. 1 & R. 96 at 1–2, 4–5. The crux of that complaint turns on a putatively automated trading program for S&P 500 E-mini futures, the OPT_ES_Multi_Model_V3 system. Jarrell invested approximately \$78,000 to be traded by that program after he was led to believe it would execute a proprietary strategy “without human intervention.” R. 96 at 4, 6 (citing Feb. 4, 2020 Jarrell Decl. ¶ 3). As a result of extreme market volatility on February 5, 2018, in which the S&P 500 Index fell by 4.1 percent in a single day,¹ the developers of that program, which did not have a formal stop-loss protocol, manually entered a sell order before the end of that day’s trading. *Id.* at 10–11 (citing Feb. 4,

¹ At the time, February 5, 2018 represented the largest single-day points drop in the history of the Dow Jones Industrial Average. *See* Matt Egan, *Dow plunges 1,175—worst point decline in history*, CNN Business (Feb. 5, 2018, 7:45 PM), [rb.gy/zrfihq](https://www.cnn.com/2018/02/05/markets/dow-plunge).

2020 Jarrell Decl. ¶¶ 21, 25). Jarrell lost \$65,345.06. *Id.* at 11. Respondents assert that, absent the manual decision to override, Jarrell’s losses would have exceeded \$96,000. Resp. Br. 10.

Jarrell filed his complaint on June 14, 2018, raising claims of fraudulent solicitation and unauthorized trading against respondents Robert Lee Spears, Jr.; Brian Miller; Optimized Trading, LLC; Lakefront Futures & Options LLC; Striker Securities, Inc.; and R.J. O’Brien & Assocs., LLC. R. 1. For our purposes, those respondents fall into three categories:

1. *Optimized Respondents (Optimized Trading, LLC; Brian Miller; Robert Lee Spears, Jr.)*. Optimized Trading, LLC, the developer of the OPT_ES_Multi_Model_V3 trading system, was founded by Brian Miller and Appellee Robert Lee Spears, Jr. R. 96 at 6. Miller, the self-described “ ‘quant’ guy,” went to high school with Jarrell and initially discussed Jarrell’s interest in trading over LinkedIn, ultimately offering to put Jarrell in contact with his “business partner” Spears and offering Jarrell certain discounts to commissions and fees if he did so. *Id.* at 6–8, 13–14. Spears, who owns 40 percent of Optimized, in turn worked with Jarrell to open an account and begin trading after discussions with Miller had led Jarrell to invest. *Id.* at 5, 8. Spears testified to having helped create the Optimized website and handling “the business, the marketing, and the client communications.” *Id.* at 14 (citation omitted). Unlike Spears, neither Optimized nor Miller have ever been registered with the Commission.

2. *Lakefront Respondents (Lakefront Futures & Options LLC; Spears)*. Lakefront Futures & Options LLC, which held the account Jarrell traded on, is an Introducing Broker (IB) registered with the Commission. *Id.* at 4–5. Distinct from his role as co-owner of Optimized, Spears was an Associated Person (AP) of Lakefront during all relevant times. *Id.* at 5–6. Specifically Spears was registered in his capacity as an AP of Lakefront between December 2015 and March 2021. Nat’l Futures Ass’n, *BASIC Profile 0226075: Robert Lee Spears, Jr.*,

<https://rb.gy/0rquex> (last visited Oct. 5, 2021) (listing Spears as approved as an NFA associate member, branch manager, and AP of Lakefront during that time period). When setting up his Lakefront account, Jarrell executed a conflict-of-interest policy acknowledging Spears's dual roles as co-owner of Optimized and AP of Lakefront, as Spears would be receiving compensation from both entities. R. 96 at 10.

3. *Non-Party Respondents (Striker Securities, Inc.; R.J. O'Brien & Assocs., LLC).*

Striker Securities, Inc. is an IB not affiliated with Lakefront that acts as an intermediary between investors and systems developers. Jarrell authorized Striker to execute trades for his account at Lakefront. *Id.* at 6, 9. R.J. O'Brien & Assocs., LLC is the Futures Commission Merchant (FCM) that held Jarrell's investment account. *Id.* at 4–5, 8. Neither Striker nor R.J. O'Brien were alleged to have done anything directly related to Jarrell's trading losses. *Id.* at 2.

Notably, Spears was thus acting in two capacities: First, Spears was acting as an AP of Lakefront, the capacity in which he was registered. Second, Spears was acting as the co-owner of non-registrant Optimized, the capacity in which he allegedly misrepresented to Jarrell the putatively automated nature of Optimized's trading program.

Within weeks of Jarrell filing his complaint, the Office of Proceedings sent him a deficiency letter. That letter noted that Optimized and Miller were not registered with the Commission, and that Jarrell's complaint had failed to allege that either Striker or R.J. O'Brien had engaged in conduct directly related to the complained-of trading losses. R. 2. In response, Jarrell amended his complaint on August 3, 2018 to drop the claims against Miller, Striker, and R.J. O'Brien. R. 5. Jarrell elected, however, to keep his claims against Optimized.

Following a September 6, 2019 discovery conference, R. 40a, the Judgment Officer dismissed Jarrell's claims against non-registrant Optimized for lack of jurisdiction. R. 57.

Although there was “a compelling argument that Optimized should have registered as a CTA,” the Judgment Officer concluded that Optimized did not fall under Section 14 in light of Congress’s 1982 amendments “narrowing jurisdiction only to persons registered under the Act.” *Id.* at 3–5. By contrast, the order allowed Jarrell’s claims against Spears and Lakefront to continue, noting that jurisdiction existed “over Spears, who appears to have been acting as both an agent of Optimized and as an Associated Person of Respondent Lakefront.” *Id.* at 6.

After dismissing the claims against Optimized, the Judgment Officer further asked Jarrell to clarify the damages he was seeking, as the evidence suggested that the decision to manually enter the sell order saved Jarrell from suffering even greater losses. R. 71 & R. 96 at 3. In response, Jarrell abandoned his unauthorized-trading claims. R. 74. The parties then proceeded to a telephonic hearing on the merits, held in February 2020. R. 77.

The Judgment Officer issued the decision under review on November 2, 2020. R. 96. At that point, only Jarrell’s fraudulent-solicitation claims against Spears and Lakefront remained. Addressing the merits of those claims, the Judgment Officer found that “Spears did, as an agent and co-owner of non-party Optimized, fraudulently solicit Jarrell’s investment” because (1) Spears misrepresented the putatively automated nature of Optimized’s trading program by failing to disclose that it could be overridden by human intervention; (2) such misrepresentation was material given Jarrell’s “clear, consistent and entirely credible” testimony that the “ ‘eliminati[on of] human emotion’ from the trading decision” was “of utmost importance” to his decision to invest; and (3) “a preponderance of the evidence” showed that Spears acted “with recklessness” because, even though he did not speak directly to Jarrell before Jarrell decided to invest, Spears was “responsible” for various Optimized communications and marketing materials that failed to disclose possible human intervention in trading. *Id.* at 2, 11–14. By contrast, the

Judgment Officer found “no evidence tying Lakefront to any of the conduct at issue.” *Id.* at 14. She accordingly rejected Jarrell’s various arguments that Lakefront should be held vicariously liable. Spears was not “wearing a Lakefront hat” at the time of the fraudulent solicitation and thus his conduct fell outside “ ‘the scope of [the agent’s] employment or office.’ ” *Id.* at 14–16 (citing 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2) (alteration in original).

Despite finding that Spears had fraudulently solicited Jarrell’s investment, the Judgment Officer nevertheless dismissed Jarrell’s claim against Spears for lack of jurisdiction. Observing that Spears’s “capacity” at the time of the fraudulent solicitation—that is, whether Spears was “wearing a Lakefront hat” or an Optimized hat—was “the central legal problem of this matter,” the Judgment Officer concluded that Section 14 does not extend to Spears “for activities undertaken within the scope of his employment at non-registered Optimized.” *Id.* at 16–17. As such, the Judgment Officer dismissed Jarrell’s remaining claim against Spears, concluding that while “[i]t may be that Spears, Miller and Optimized should be held liable for fraudulent solicitation ... that cannot be litigated or adjudicated in this Reparations forum.” *Id.* at 16.

Jarrell noticed his appeal on November 17, 2020. R. 99. He then perfected that appeal by filing his brief on December 4, 2020. 17 C.F.R. § 12.401(b). Spears and Lakefront timely filed their answering brief on January 4, 2021. *Id.* § 12.401(c).

DISCUSSION

The sole question to be decided on appeal is whether Spears, who is a registered AP of Lakefront but engaged in the alleged wrongdoing solely on behalf of non-registrant Optimized, is subject to Section 14 reparations jurisdiction. The answer is yes, for several reasons.

First and foremost, the plain language of Section 14 provides that the Commission’s reparations jurisdiction encompasses “any person who is registered under this chapter.” And that

is true regardless of the “capacity”—a word that appears nowhere in the statute—in which a registered person committed the alleged violation. Section 14(a)(1)’s jurisdictional scope is worded broadly, extending to “[a]ny” complainant for “any violation” of “any” statutory or regulatory directive under the CEA committed “by any person who is registered under this chapter.” 7 U.S.C. § 18(a)(1); *see, e.g., United States v. Gonzales*, 520 U.S. 1, 5 (1997) (“Read naturally, the word ‘any’ has an expansive meaning, that is, ‘one or some indiscriminately of whatever kind.’ ” (quoting Webster’s Third New Int’l Dictionary 97 (1976))). Apart from the necessity of “actual damages,” the major restriction Congress imposed on the potential universe of reparations claims for CEA violations is the requirement that respondents be “registered.” For jurisdictional purposes, Section 14 on its face thus creates a bright-line rule: Those who are registered with the Commission are potentially subject to reparations proceedings, and those who are not are not.²

The decision below, however, imposed a further “capacity” requirement. Under that understanding, only those persons who are *both* registered *and* acting in the capacity in which they registered at the time of the alleged wrongdoing fall under Section 14. *See* R. 96 at 17

² In delineating this bright line, the Commission has long taken a “flexible” approach to “the concept of a ‘person who is registered under this Act,’ ” consistent with “the remedial purposes of section 14 of the Act,” that provides for reparations jurisdiction over principals acting on behalf of registrants; certain commodity trading advisors under Section 4m, 7 U.S.C. § 6m; and those who willfully aid and abet registrants’ wrongdoing. 49 Fed. Reg. 19,445, 19,446 (May 8, 1984). Subsequent decisions rejecting specific time-of-registration requirements have confirmed this “flexible” approach. *See, e.g., Gary S. Nelson, D.M.D., Inc. Ret. Tr. v. Diversified Inv. Grp.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,627, No. 83-R668, 1985 WL 56290 (CFTC June 5, 1985) (“The exercise of our reparations jurisdiction over both those who are registered at the time of the violation and those who become registered thereafter fully effectuates Congressional intent in amending Section 14(a) in 1982.”); *McGough v. Bradford*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,265, No. 97-R116, 2000 WL 36696897 (CFTC Sept. 28, 2000) (exercising reparations jurisdiction over respondent who “was not registered either at the time of the wrongdoing or at the time the complaint was filed” but “was registered for a period of several months between those two events”).

Here, it is undisputed that Spears is a registered person under the Commodity Exchange Act; the parties dispute only the significance of the capacity in which Spears acted relative to his registration status. As such, this appeal does not present—and this opinion does not answer—the sort of predicate definitional questions described above.

(dismissing Spears, a registered party, because “this Office does not have jurisdiction to hold Spears liable for activities undertaken within the scope of his employment at non-registered Optimized”). In light of the clear statutory language, the text does not support inferring this additional jurisdictional threshold. *See, e.g., Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1724 (2020) (“This case begins, and pretty much ends, with the text.”).

Section 14’s structure, history, and purpose confirm this plain-language reading. *See Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842–843 & n.9 (1984) (instructing agencies to “give effect to the unambiguously expressed intent of Congress” by “employing traditional tools of statutory construction”); *Kisor v. Wilkie*, 139 S. Ct. 2400, 2415 (2019) (explaining that “the ‘traditional tools’ of construction” include consideration of a provision’s “structure, history, and purpose”). Congress created the Section 14 reparations program to provide victims of CEA violations with an alternative, streamlined dispute-resolution process “analogous to the operation of a small claims court.” S. Rep. No. 95-850, at 16 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 2087, 2104. Reflecting that guiding remedial purpose, Congress, in consultation with the Commission, amended Section 14 several times between 1974 and 1982 to improve the program’s efficiency and workability as discussed above. Most notably, responding to a severe backlog of pending reparations cases and adopting the Commission’s proposal, Congress in the Futures Trading Act of 1982 removed from the CFTC’s reparations jurisdiction unregistered persons who were “required to be registered.” *Cf.* 7 U.S.C. § 18(a) (Supp. II 1978); *Stucki v. American Options Corp.*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,559, Nos. R 77-59 & R 77-78, 1978 WL 478899 (CFTC Feb. 13, 1978) (asserting jurisdiction over the same). In doing so, however, Congress did not impose any additional restrictions on potential reparations respondents who are in fact registered. Adopting

a requirement that persons be acting in their registration capacity would thus go beyond Congress's intent and impose an additional, fact-intensive procedural hurdle that, as this case demonstrates, can result in otherwise-meritorious claims being denied. That would both undermine the bright-line approach staked out by Section 14's registration requirement and increase the complexity, length, and cost of reparations proceedings, diminishing their value as an alternative to full-dress litigation.

A capacity requirement is likewise inconsistent with our Section 14 precedent. We have long taken a "flexible" approach to deciding whether a particular party is "a 'person who is registered under this Act,' " a term not specially defined in the statute that "should be construed to effectuate the remedial purposes of section 14." 49 Fed. Reg. 19,445, 19,446 (May 8, 1984); *see also supra* n.2. As such, the Commission has exercised Section 14 reparations jurisdiction over respondents who became registered within the applicable two-year limitations period even if they were not registered at the time of the alleged wrongdoing, *Gary S. Nelson, D.M.D., Inc. Ret. Tr. v. Diversified Inv. Grp.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,627, No. 83-R668, 1985 WL 56290 (CFTC June 5, 1985), as well as over respondents who were registered only briefly between the alleged wrongdoing and the filing of a complaint, *McGough v. Bradford*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,265, No. 97-R116, 2000 WL 36696897 (CFTC Sept. 28, 2000). Consistent with Section 14's "remedial purposes," we decline to infer a capacity requirement that would further limit the universe of potentially meritorious private claims that may be brought in reparations proceedings.

Finally, several policy considerations counsel against imposing such a requirement. While the decision below does not explain the basis for its capacity requirement, the best argument in favor appears to be one of fairness: If non-registrants are immune, why should

Spears face liability for his conduct on behalf of a non-registered entity? Moreover, why should Spears, who is registered in connection with a separate entity that was uninvolved in the wrongdoing, face liability when Optimized and Miller are immune from reparations claims for substantially similar conduct because they are not registered? *Cf.* R. 96 at 16 n.4 (“This Initial Decision takes no position on the relative wrongdoing of Spears, Miller, and Optimized, since those latter two were not parties to this proceeding.”). These concerns, while not without merit, are outweighed by several other considerations.

First, to the extent that restricting reparations jurisdiction to registered parties raises fairness concerns, that reflects Congress’s judgment that establishing a bright-line jurisdictional rule will, on balance, ensure a more effective and efficient reparations program overall. It should not be surprising, however, that limiting reparations claims against registered persons may preclude liability against similarly situated parties at the margins. *Cf.* Kathleen M. Sullivan, *The Justices of Rules and Standards*, 106 Harv. L. Rev. 22, 62 (1992) (“Of course, the counterargument to rules-as-fairness is that bright-line rules are arbitrary at the border.”).

Second, imposing a capacity requirement would itself produce countervailing unfair outcomes. As this case demonstrates, an otherwise-prevailing claimant may still be denied any meaningful relief when, at the end of a potentially years-long adjudicatory process, the respondent can show that the relevant misconduct occurred outside the capacity in which he or she is registered. *See* R. 96 at 2 (dismissing claim on jurisdictional grounds despite “find[ing] that Spears did, as an agent and co-owner of non-party Optimized, fraudulently solicit Jarrell’s investment”). Moreover, imposing a capacity requirement that shields from Section 14 jurisdiction a sub-class of registered persons may encourage strategic gamesmanship through the creation and use of unregistered entities designed to evade reparations liability.

Third and relatedly, a capacity requirement would raise the costs and reduce the efficiency of Section 14 proceedings. Because determining the capacity in which a particular respondent may have been acting at particular times is a highly context- and fact-specific inquiry, potentially extensive evidentiary development through the adversarial process would be required to establish jurisdiction (or not) over particular conduct. Again, consider this case. Within weeks of Jarrell filing his complaint, the Office of Proceedings was able to send a deficiency letter advising that multiple named respondents were not registered, as a person's registration status is publicly available and easily ascertained. R. 2. After Jarrell nevertheless declined to drop his claims against non-registrant Optimized, the Judgment Officer issued a straightforward order ruling that, as a matter of law, she lacked jurisdiction over Optimized. R. 57. However, that same order concluded that "this Office does have jurisdiction over Spears, who appears to have been acting as both an agent of Optimized and as an Associated Person of Respondent Lakefront." *Id.* at 6. Only following multiple hearings and extensive briefing, stretching more than a year after that initial jurisdictional order, did it become clear that Spears was acting, as a factual matter, "solely as co-owner of non-party Optimized and not as an AP of Lakefront" at the relevant time. R. 96 at 4.

The bright-line approach embodied in Section 14's registration requirement eliminates the need for any such inquiry. Determining at the outset of reparations proceedings whether particular parties may be named as respondents based on their registration status, as Congress intended, best conserves the parties' and agency's attention, time, and resources.

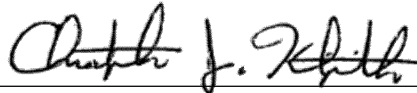
CONCLUSION

For these reasons, Section 14 reparations jurisdiction exists over Spears as "a[] person who is registered under" the Commodity Exchange Act. 7 U.S.C. §18(a)(1). The dismissal of

Jarrell's fraudulent-solicitation claim against Spears is reversed and remanded for further proceedings not inconsistent with this opinion.

IT IS SO ORDERED.

By the Commission (Acting Chairman BEHNAM and Commissioners STUMP and BERKOVITZ).

A handwritten signature in black ink, appearing to read "Christopher J. Kirkpatrick", written over a horizontal line.

Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: October 5, 2021