

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Commodity Futures Trading Commission,

Plaintiff,

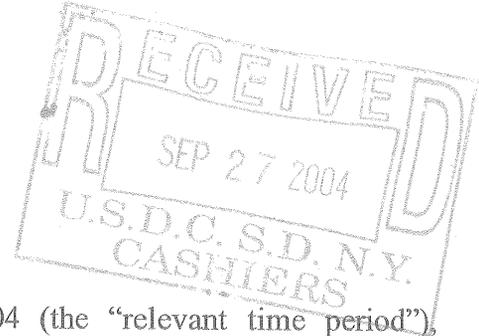
v.

First Liberty Group, Inc. and  
Mauricio DaSilva,

Defendants.

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COMPLAINT FOR INJUNCTIVE  
AND OTHER EQUITABLE  
RELIEF AND FOR PENALTIES  
UNDER THE COMMODITY  
EXCHANGE ACT, AS  
AMENDED, 7 U.S.C. §§ 1-25



I.

SUMMARY

1. From at least November 2003 to May 2004 (the "relevant time period"), employees of Defendant First Liberty Group, Inc. ("FLG") solicited funds from customers purportedly to be used for trading foreign currency.

2. The funds received by FLG were not used for trading foreign currency. Instead, customer funds were deposited into a business checking account at HSBC Bank in FLG's name ("HSBC account") by Defendant Mauricio DaSilva ("DaSilva"), who served as the sole signatory on the account and was the founder and Chief Executive Officer of FLG.

3. More than 90% of the funds received by FLG were either used by Defendants FLG and DaSilva or transferred to foreign bank accounts maintained in the name of various foreign companies in Israel and the Netherlands, none of which companies appear to have traded foreign currency on behalf of FLG's customers. Additional funds were used for office supplies and expenses, and bank related fees.

4. Through the conduct described above, Defendant FLG has violated Section 4b(a)(2)(C)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(C)(i) and (iii) (2002), and Commission Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3) (2004).

5. Through the conduct described above, FLG also has violated Section 4b(a)(2)(C)(i) and (iii) of the Act, and Commission Regulation 1.1(b)(1) and (3), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002).

6. Through the conduct described above, FLG has violated Section 4(a) of the Act, 7 U.S.C. § 6(a) (2002).

7. Defendant DaSilva is liable as a controlling person for the violations by Defendant FLG of Sections 4(a) and 4b(a)(2)(C)(i) and (iii) of the Act, 7 U.S.C. §§ 6(a) and 6b(a)(2)(C)(i) and (iii) (2002) and Commission Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3) (2004), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002).

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

9. Accordingly, pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2002), Plaintiff Commodity Futures Trading Commission (the "Commission") brings this action to enjoin the unlawful acts and practices of Defendants FLG and DaSilva, and to compel their compliance with the provisions of the Act and Regulations thereunder. In addition, the Commission seeks civil penalties, an accounting and such other equitable relief as the Court may deem necessary or appropriate.

## II.

### JURISDICTION AND VENUE

10. The Commodity Exchange Act, as amended, 7 U.S.C. § 1 et. seq. (2002) (the “Act”), prohibits fraud in connection with the trading of commodity futures contracts and establishes a comprehensive system for regulating the purchase and sale of such futures contracts. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear 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. In addition, Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B) (2002), confers upon the Commission jurisdiction over certain retail transactions in foreign currency for future delivery, including the transactions alleged in this complaint.

11. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002), in that defendants are found in, inhabit, or transact business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

## III.

### THE PARTIES

#### A. Plaintiff

12. The Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 et seq. (2002), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2004).

## B. Defendants

13. First Liberty Group (“FLG”) was incorporated on October 17, 2003 in the State of New York. FLG has never been registered with the Commission in any capacity. In addition, FLG was not a financial institution, a broker or dealer, or an associated person of a broker or dealer, a futures commission merchant (“FCM”), an insurance company, a regulated subsidiary of an insurance company, a financial holding company, or an investment bank holding company.

14. Mauricio DaSilva (“DaSilva”) maintains an address in Newark, New Jersey and in North Miami Beach, Florida. DaSilva was the founder and Chief Executive Officer of FLG. DaSilva listed himself as the President of FLG in FLG’s bank account opening documents. DaSilva has never been registered with the Commission in any capacity.

## IV.

### STATUTORY BACKGROUND

15. Section 2(c)(2)(B)(i)-(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(i)-(ii) (2002), provides that the Commission shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a commodity for future delivery, and is “offered to, or entered into with, a person that is *not* an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is” a regulated entity, as defined therein (emphasis added). Section 2(c)(2)(B)(i)-(ii) of the Act was enacted by Congress as part of the Commodity Futures Modernization Act of 2000 (“CFMA”), CFMA § 2(5), Pub. L. No. 106-554, 114 Stat. 2763 (2000), in an effort “to clarify the jurisdiction of the Commodity Futures Trading Commission over certain retail foreign exchange transactions and bucket shops that may not be otherwise regulated.”

16. Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12)(A)(xi) (2002), defines an “eligible contract participant” as, *inter alia*, an individual who has total assets exceeding: (a) \$10 million; or (b) \$5 million 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.

17. Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B)(ii)(I) through (VI) (2002), provides in pertinent part that the Commission shall have jurisdiction over an agreement, contract, or transaction in foreign currency unless the counterparty, or the person offering to be the counterparty, of the person is a financial institution, a broker or dealer or an associated person of a broker or dealer, an FCM or an affiliated person of an FCM, an insurance company or a regulated subsidiary of an insurance company, a financial holding company, or an investment bank holding company.

18. Section 4(a) of the Act, 7 U.S.C. § 6(a) (2002), provides that, unless exempted by the Commission, it shall be unlawful for any person to offer to enter into, enter into, to execute, to confirm the execution of, or conduct an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity; and (b) such contracts have not been executed or consummated by or through such contract market.

19. Section 4b(a)(2)(C)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(C)(i) and (iii) (2002), provides, in pertinent part, it is unlawful for any person in or in connection with any sale

of any futures contract of any commodity that is or may be used for hedging or determining the price basis of any transaction or for delivering any commodity in interstate commerce for or on behalf of any other person (i) to cheat or defraud or attempt to cheat or defraud such other person or (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract.

20. Commission Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3) (2004), provides in relevant part that for any foreign currency transaction within the Commission's jurisdiction, it shall be unlawful for any person directly or indirectly, in or in connection with any account, agreement, contract or transaction: (1) to cheat or defraud or attempt to cheat or defraud any person; or (3) willfully to deceive or attempt to deceive any person by any means whatsoever.

21. Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2004), provide that the act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent or other person.

22. Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002), provides that any person who, directly or indirectly, controls any person who has violated any provision of the Act may be held liable for such violation in any action brought by the Commission to the same extent as the controlled person.

V.

FACTS

**A. FLG's Background**

23. FLG's official address on state corporate records for accepting service is 92-29 Queens Boulevard, Office #11, Rego Park, New York 11374. FLG maintained leased space at 82 Wall Street, Suite 701, New York, New York 10005 from October 16, 2003 until May 2004. FLG purported to offer to trade foreign currencies on behalf of customers in the "spot" or "forex" market through FLG's "Managed Forex program." However, customer funds were not traded as promised but rather were misappropriated or misused by the Defendants.

**B. DaSilva's Background**

24. DaSilva's name appeared as founder and Chief Executive Officer of FLG on FLG's press release purportedly dated October 15, 2003. DaSilva also opened the HSBC account on or about October 24, 2003 into which customer funds were deposited. DaSilva was the sole signatory on the HSBC account and was listed as its President of FLG on these account records. On or about November 18, 2003, DaSilva opened an account on behalf of FLG with Federal Express and in November 2003, he opened an account for FLG's telephone answering service with MAP Communications, Inc. In addition, DaSilva signed the lease for FLG's business address located at 82 Wall Street, Suite 701, New York, New York on October 16, 2003.

**C. FLG's Bank Records**

25. FLG maintained the HSBC account into which customer funds were deposited for the purported purpose of trading foreign currency.

26. From at least November 2003 to May 2004, customer funds were deposited into the HSBC account.

27. Instead of using the customer funds deposited into the HSBC account for the purposes of trading foreign currency, over \$2 million in customer funds were transferred by wire to overseas bank accounts in the names of various foreign companies in Israel and the Netherlands. Defendant DaSilva, as sole signatory, was responsible for all movement of funds in FLG's HSBC account. There is no record that any money flowed back from these foreign companies to FLG's HSBC account.

28. DaSilva used over \$9,000 in FLG customer funds to pay cable bills, postage fees, FedEx, Con Edison, MAP Communications, and Verizon. In addition, checks totaling \$12,500 were drawn against the HSBC account and made payable to DaSilva.

**D. Defendants Cheated and Defrauded Customers**

29. FLG telephone solicitations and other advertising materials purported to offer customers the opportunity to speculate in the value of foreign currencies. FLG employees offered to open and manage customer foreign currency accounts, and promised customers steady returns on their funds while downplaying the risk of loss such as promises that customers would reap profits of 10 to 20%, and that FLG imposed a 10% stop-loss policy.

30. After sending their money to FLG, customers received bi-weekly statements from FLG, which typically reported consistent net earnings for each two-week period. After customers received these statements, FLG employees pressured them to make additional high-dollar investments with the firm. FLG did not disclose to customers that their funds would not be managed as promised, or that their funds would be used in furtherance of the scheme.

31. In soliciting prospective customers to trade foreign currency on their behalf, FLG made the following misrepresentations of material facts:

- a. All funds deposited by customers would be used for foreign currency trading;
- b. FLG's four-year trading record indicated that it had no losing months and annual returns of 27.22% in 2000, 24.71% in 2001, 34.87% in 2002 and 40.95% in 2003 with an average annualized return of 31.94% despite the fact that FLG wasn't incorporated until 2003, didn't begin its operation at 82 Wall Street until October 16, 2003 and did not open the HSBC account until October 24, 2003; and
- c. FLG imposed a 10% stop-loss policy that did not exist, and, alternatively, could not guarantee that customer losses would be minimized.

**E. The Purported Foreign Currency Transactions Were Illegal Off-Exchange Futures Contracts**

32. Between at least November 2003 and May 2004, FLG engaged in an elaborate scheme to defraud retail customers. FLG's promotional materials described an opportunity to profit based upon the fluctuations in the relative values of foreign currencies. While the defendants claimed that their funds were used in spot transactions, the foreign currency that defendants purported to offer and sell were actually contracts for future delivery of foreign currencies that were cash settled in U.S. dollars ("futures contracts"). The prices or pricing formulas for these contracts were established at the time the purported contracts were initiated, and were ostensibly settled through offset, cash settlement or other means to avoid delivery. The contracts did not have delivery dates. These purported contracts were offered to the general public and were not individually negotiated.

33. The customers who sent funds to FLG had no commercial need for the foreign currency. Instead, customers entered into these transactions to speculate and profit from anticipated price fluctuations in the markets for these currencies.

34. Customers did not anticipate taking – and did not take – delivery of the foreign currencies they purportedly purchased as a consequence of these transactions. FLG did not screen customers for their ability to make or take delivery of foreign currency. FLG did not require their customers to make or take delivery of foreign currency nor to set up banking relationships to facilitate delivery of the foreign currencies. Defendants did not conduct their purported foreign currency futures transactions on or subject to the rules of a board of trade that has been designated by the Commission as a contract market, nor were Defendants’ transactions executed or consummated by or through a contract market. Defendants did not conduct transactions on a facility registered as a derivatives transaction execution facility. FLG was not an appropriate counterparty under the Act for the alleged transactions herein.

35. The customers solicited by FLG were not eligible contract participants.

## VI.

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

#### COUNT I

##### **Fraud in the Sale of Futures Contracts**

36. Paragraphs 1 through 35 are re-alleged and incorporated herein.

37. During the relevant time period, Defendant FLG cheated or defrauded or attempted to cheat or defraud customers or prospective customers of FLG and willfully deceived or attempted to deceive customers or prospective customers by, among other things: misappropriating or misusing funds received from customers and making false statements regarding trading losses, the risks of trading foreign currencies, the legitimacy of their operation, and the safety of customer funds, all in violation of Section 4b(a)(2)(C)(i) and (ii) of the Act, 7 U.S.C. § 6b(a)(2)(C)(i) and (iii) (2002), and Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1)

and (3) (2004). Defendant FLG's conduct was in connection with the orders to make, or the making of, contracts of sale of commodities for future delivery, made or to be made, for or on behalf of any other persons, and such contracts for future delivery were or could be used for the purposes set forth in Section 4b(a)(2)(C)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(C)(i) and (iii) (2002).

38. During the relevant time period, DaSilva, as the founder and Chief Executive Officer of FLG, directly or indirectly controlled FLG, its employees and others and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count I. Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002), as described in this Count I, DaSilva is liable for the violations described in this Count I, to the same extent as FLG.

39. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2004), FLG is liable for any violations of Section 4b(a)(2)(C)(i) and (iii), 7 U.S.C. § 6b(a)(2)(C)(i) and (iii) (2002), and Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3) (2004) of the Act by its officers, directors, managers, employees, and agents, in that all such violations were within the scope of their office or employment with FLG.

40. Each material misrepresentation or omission made during the relevant period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(C)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(C)(i) and (iii) (2002) and Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3) (2004).

## COUNT II

### **Sale of Illegal Off-Exchange Futures Contracts**

41. Paragraphs 1 through 35 are re-alleged and incorporated herein.

42. During the relevant period, FLG offered to enter into, executed, confirmed the execution of, or conducted an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions were not conducted on or subject to the rules of a board of trade which was designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity, and (b) such contracts were not executed or consummated by or through such contract market, in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2002).

43. During the relevant period, DaSilva, as the founder and Chief Executive Officer of FLG, directly or indirectly controlled FLG and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count II. Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002), DaSilva is liable for the violations of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2002), described in this Count II, to the same extent as FLG.

56. Each foreign currency futures transaction not conducted on a designated contract market or registered derivatives transaction execution facility made during the relevant time period, including but not limited to those conducted by Defendants as specifically alleged herein, is alleged as a separate and distinct violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2002).

## VII.

### RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), and pursuant to the Court's own equitable powers:

A. Find that Defendants violated Sections 4(a) and 4b(a)(2)(C)(i) and (iii) of the Act, 7 U.S.C. §§ 6(a) and 6b(a)(2)(C)(i) and (iii) (2002), and Commission Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3) (2004);

B. Enter an *ex parte* statutory restraining order and an order of preliminary and permanent injunction restraining and enjoining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations;

2. refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations;

3. withdrawing, transferring, removing, dissipating, concealing, or disposing of, in any manner, any funds, assets, or other property, wherever situated,

including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control, or in the name of any of the Defendants for the amounts indicated in this complaint; and

C. Enter an *ex parte* statutory restraining order and orders of preliminary and permanent injunctions prohibiting Defendants and any other person or entity associated with them, including any successor thereof, from:

1. engaging in conduct, in violation of Sections 4(a) and 4b(a)(2)(C)(i) and (iii) of the Act, 7 U.S.C. §§ 6(a) and 6b(a)(2)(C)(i) and (iii) (2002), and Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3) (2004); and

2. soliciting funds for, engaging in, controlling, or directing the trading of any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise;

D. Enter an *ex parte* statutory restraining order and orders of preliminary and permanent injunctions directing Defendants to provide Plaintiff immediate and continuing access to their books and records;

E. Enter an *ex parte* statutory restraining order and orders of preliminary and permanent injunctions directing Defendants to take such steps as are necessary to transfer possession of all assets including the repatriation to the territory of the United States all funds and assets of FLG customers described herein which are held by Defendants or are under their direct or indirect control, jointly or singly, and deposit such funds into the Registry of this Court or otherwise as the Court may order, and provide the Commission and the Court with a written description of the funds and assets so repatriated;

F. Enter an order of permanent injunction directing Defendants, and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest thereon from the date of such violations;

G. Enter an order of permanent injunction directing Defendants to make full restitution to every customer whose funds were received by them as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;

H. Enter an order of permanent injunction assessing a civil monetary penalty against each defendant in the amount of not more than the higher of \$120,000 or triple the monetary gain to the defendant for each violation by the defendant of the Act and Commission Regulations;

I. Enter an *ex parte* statutory restraining order and orders of preliminary and permanent injunctions directing that Defendants make an accounting to the court of all their assets and liabilities, together with all funds they received from and paid to clients and other persons in connection with commodity futures transactions or purported commodity futures transactions, and all disbursements for any purpose whatsoever of funds received from commodity transactions, including salaries, commissions, interest, fees, loans and other disbursements of money and property of any kind, from, but not limited to, December 2000 through and including the date of such accounting;

J. Enter an order of permanent injunction requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2002);

K. Order such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: September 4, 2004

Respectfully submitted,

ATTORNEYS FOR PLAINTIFF  
COMMODITY FUTURES TRADING  
COMMISSION

Stephen J. Obie  
Regional Counsel

By: 

Elizabeth C. Brennan [EB-2612]  
Senior Trial Attorney  
Christina Kang [CK-9560]  
Trial Attorney  
Steven Ringer [SR-9491]  
Chief Trial Attorney  
U.S. COMMODITY FUTURES  
TRADING COMMISSION  
140 Broadway, 19<sup>th</sup> Floor  
New York, New York 10005  
(646) 746-9747  
(646) 746-9940 (facsimile)  
ebrennan@CFTC.gov