UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. COMMODITY FUTURES TRADING COMMISSION, **Plaintiff,** **v.** **BRETT G. HARTSHORN,** **Defendant.**	Case No. _____ **COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AND CIVIL MONETARY PENALTIES UNDER THE COMMODITY EXCHANGE ACT** **JURY TRIAL DEMANDED**

Plaintiff, U.S. Commodity Futures Trading Commission ("CFTC" or "Commission"), by and through its attorneys, alleges as follows:

I. SUMMARY

1. From at least June 18, 2008 to in or around 2014 (the "Relevant Period"), Defendant Brett G. Hartshorn ("Hartshorn") fraudulently solicited at least 13 individuals (all of whom were non-Eligible Contract Participants ("ECPs," as defined in Section 1a(18) of the Commodity Exchange Act (the "Act"), 7 U.S.C.§ 1a(18)) including members of his church and individuals he met in his local community, to invest in off-exchange foreign currency (hereinafter, "forex" or "foreign currency") on a leveraged, margined, or financed basis and to give Hartshorn discretionary authority to trade forex on their behalf. As alleged in more detail below, during the Relevant Period, Hartshorn solicited and/or managed at least $906,000 in client funds and misappropriated for his own personal benefit funds of at least two clients.

2. Hartshorn told most, if not all, clients and prospective clients (collectively, "clients") that he had profitably traded forex on behalf of himself and others. He told clients that they could expect substantial profits if they permitted Hartshorn to trade forex on their behalf

(telling at least one client, for example, that Hartshorn would be able to double the client's money in a matter of months). Hartshorn also assured clients that he would limit the risk of loss to client funds. These statements were false.

3. Despite touting his skill and past success trading foreign currency on behalf of himself and others, and assuring clients that he would limit their risk of loss, the reality was far different. As Hartshorn well knew, Hartshorn had repeatedly employed risky trading strategies and suffered significant losses trading forex on behalf of others – often devastating single-day losses resulting from margin calls. Hartshorn never disclosed these losses to subsequent clients; rather, he told clients, falsely, that he had successfully traded forex for himself and for others.

4. For most, if not all, of his clients, Hartshorn proposed to be compensated by clients by splitting "profits" earned in his trading of client funds. The actual value (also known as the equity value) of a trading account consists of the account's cash balance plus the value of any open positions in the account. However, when Hartshorn calculated his share of "profits," he considered only the cash balance of the account, ignoring the fluctuating (and often declining) value of a client's open trading positions. This resulted in Hartshorn collecting thousands of dollars in fees even as a client's total equity was declining.

5. Hartshorn did not disclose that under this so-called "profit" sharing arrangement, he could be (and often was) compensated even as trading losses accumulated. Hartshorn failed to disclose material information to prospective clients, i.e., that he could be compensated even as clients' investments lost money, and Hartshorn thereby engaged in conduct that operated as a fraud or deceit on his clients.

6. Hartshorn solicited some clients to open forex trading accounts in their own names (or in the names of entities they owned and controlled), to deposit funds into those

accounts, and to provide Hartshorn the username and password for the accounts so that Hartshorn could buy and sell forex in those accounts on behalf of clients. Using the usernames and passwords provided by clients, Hartshorn logged into his clients' forex trading accounts and bought and sold forex (including currency pairs involving the Euro, British Pound, and Japanese Yen) on behalf of those clients.

7. Hartshorn solicited other clients to deposit funds directly into Hartshorn's personal bank account. Hartshorn told these clients that he, Hartshorn, would deposit their funds into his own personal forex trading account, and that he would use those funds to trade forex on the clients' behalf. For these clients, Hartshorn deposited their funds (or a portion thereof) into his own personal trading account and used the funds to trade forex, making all trading decisions with respect to these clients' funds. Hartshorn had the authority to access these clients' funds, and he alone had the authority to transfer the funds from his forex trading account. Hartshorn did, in fact, on numerous occasions, transfer client funds from his forex trading account into his own personal bank account.

8. During the Relevant Period, Hartshorn misappropriated for his own personal benefit at least $57,414 in client funds that clients transferred and entrusted to Hartshorn for the purpose of trading forex. Hartshorn never disclosed to his other clients that he had misappropriated for his own personal benefit funds that had been entrusted to him for the purpose of trading forex.

9. By virtue of this fraudulent conduct, Hartshorn has engaged, is engaging in, or is about to engage in acts and practices in violation of Sections 4b(a)(2)(A)-(C) and 4*o*(1)(A)-(B) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C) and 6o(1)(A)-(B) and Commission Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3).

10. In addition, Hartshorn, for compensation or profit, advised others as to the value of or advisability of trading in off-exchange retail forex on a leveraged, margined, or financed basis, and exercised discretionary trading authority over forex accounts for, or on behalf of persons that were not ECPs (as defined in Section 1a(18) of the Act, 7 U.S.C.§ 1a(18)), without registering as a Commodity Trading Advisor ("CTA"), and made use of the mails or any means or instrumentality of interstate commerce (including the internet, telephone, and cell phone) in connection with his business as a CTA, in violation of 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) and 6m(1), and Commission Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i).

11. Commission Regulation 5.4, 17 C.F.R. § 5.4, provides that CTAs, as defined by Commission Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i), are subject to all the requirements applicable to CTAs set forth in Part 4 of the Commission's Regulations. By failing to comply with CTA regulations contained in Part 4 of the Commission's Regulations, including Commission Regulation 4.30, 17 C.F.R. § 4.30, which prohibits CTAs from accepting client funds in the CTA's name and Commission Regulation 4.31, 17 C.F.R. § 4.31, which requires CTAs, registered or required to register under the Act, to distribute a disclosure document to clients, Hartshorn violated those respective CTA regulations, as well as Commission Regulation 5.4, 17 C.F.R. § 5.4, itself.

12. In addition, Hartshorn violated Commission Regulation 1.31, 17 C.F.R. § 1.31, by failing to produce to the Commission, in response to an administrative subpoena, documents that were required to be maintained by Hartshorn in his capacity as a CTA.

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

II. JURISDICTION AND VENUE

14. Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), authorizes the Commission to seek injunctive and other relief against any person whenever it shall appear to the Commission 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.

15. Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), authorizes the Commission to bring such actions "in the proper district court of the United States . . . to enjoin such act or practice, or to enforce compliance with this Act, or any rule, regulation, or order thereunder, and said courts shall have jurisdiction to entertain such actions . . . ."

16. The Commission has jurisdiction over forex transactions pursuant to Section 2(c)(2) of the Act, 7 U.S.C. §§ 2(c)(2), for transactions that occurred after June 18, 2008.

17. Venue lies properly with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because Hartshorn and his clients sent funds to open and maintain retail forex trading accounts with a futures commission merchant located in this District.

III. THE PARTIES

18. Plaintiff **U.S. 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 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.*

19. Defendant **Brett G. Hartshorn** resides in Sarasota, Florida and has never been registered with the Commission in any capacity.

IV. STATUTORY AND REGULATORY BACKGROUND

20. Section 2(c)(2)(C)(i) and (vii) of the Act, 7 U.S.C. § 2(c)(2)(C)(i) and (vii), provides in pertinent part, and subject to certain exceptions, that the Commission has jurisdiction over forex transactions if the transactions are offered to or entered into with a person that is not an Eligible Contract Participant ("ECP") on a leveraged, margined, or financed basis, and the transactions do not result in actual delivery within two days or otherwise create an enforceable obligation to make or take delivery in connection with the parties' line of business.

21. Section 1a(18)(A)(xi) of the Act, 7 U.S.C. § 1a(18)(A)(xi), defines an ECP, in relevant part, as an individual who has amounts invested on a discretionary basis, the aggregate of which exceeds $10 million, or $5 million if the individual enters into the transaction to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.

22. Section 1a(12) of the Act, 7 U.S.C. § 1a(12), defines a CTA, in pertinent part, and subject to certain exceptions, as any person who "for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in . . . any agreement, contract, or transaction described in [S]ection 2(c)(2)(C)(i) [of the Act, 7 U.S.C. §§ 2(c)(2)(C)(i)]." Absent an exemption, Section 4m(1) of the Act, 7 U.S.C. § 6m(1), requires that CTAs register with the Commission.

23. Pursuant to Section 2(c)(2)(C)(iii)(I)(bb) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb), and subject to certain exceptions, an entity must be registered pursuant to Commission regulation in order to exercise discretionary trading authority over forex accounts on behalf of ECPs.

24. Commission Regulation 5.1(e)(1), 17 C.F.R. § 5.1(e)(1), defines a CTA for purposes of Part 5 of the Commissions Regulations, 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. Commission Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i), requires any CTA, as defined by Commission Regulation 5.1(e)(1), 17 C.F.R. § 5.1(e)(1), to register with the Commission as a CTA.

25. Commission Regulation 5.1(m) defines "retail forex transactions" to mean, among other things, any account, agreement, contract, or transaction described in Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C).

V. FACTS

A. Hartshorn's Fraudulent Solicitation and Misappropriation of Client Funds

26. As alleged more specifically below, during the Relevant Period, Hartshorn fraudulently solicited numerous clients to invest in forex.

27. Hartshorn typically met his victims at church or socially in his local community. Hartshorn told his clients that he had successfully traded foreign currency for both himself and others, but he never disclosed to clients that he had actually suffered losses – often large single-day losses – when trading foreign currency on behalf of other clients.

28. Hartshorn also told clients that he would trade their funds in a manner to limit the risk of loss, again failing to disclose his pattern and history of losses trading on behalf of clients.

29. In addition, as set forth in more detail below, Hartshorn misappropriated for his own personal benefit funds that had been entrusted to him by clients for the purpose of trading forex. Hartshorn never disclosed this misappropriation to his clients.

30. As alleged more specifically below, Hartshorn, for compensation or profit, advised others as to the value or advisability of trading forex and exercised discretionary trading authority over accounts for or on behalf of his individual clients in connection with retail forex transactions. Nevertheless, Hartshorn has never been registered with the Commission in any capacity and has not distributed disclosure documents to clients as required by Commission Regulation 4.31, 17 C.F.R. § 4.31.

31. Often, as alleged more fully below, Hartshorn engaged in trading strategies that resulted in margin calls in client accounts because the account equity became too low to support the margin requirement for open positions resulting from trades placed by Hartshorn. When these margin calls occurred, the margin calls resulted in the liquidation of open trades and the realization of trading losses.

32. Upon information and belief, none of the individual clients solicited by Hartshorn were ECPs.

1. Hartshorn Lost Client A's Funds Trading Foreign Currency

33. In or around 2007, Hartshorn solicited Client A to invest in forex.

34. Hartshorn agreed to exercise discretion over Client A's forex account in exchange for 50% of the profits earned in the account.

35. Hartshorn told Client A that he, Hartshorn, had successfully traded foreign currency for both himself and for others.

36. On or about December 18, 2007, Client A deposited approximately $50,000 into Client A's foreign currency trading account, and Client A gave Hartshorn the username and password for the trading account so that Hartshorn could access the account and make trading decisions with respect to the deposited funds.

37. After the December 2007 deposit, Hartshorn in fact made all trading decisions in Client A's forex trading account.

38. After Client A invested, Hartshorn told Client A that there was a market downturn and that as a result, Client A should deposit additional funds into Client A's forex trading account. Client A deposited an additional $25,000 into Client A's trading account on or around January 4, 2008.

39. On or around January 16, 2008, Client A's brokerage firm ("Brokerage Firm") issued margin calls on the account because the account equity was too low to support the margin requirement on Client A's open positions, resulting in the forcible liquidation of several of Client A's forex positions and one-day losses of over $78,000 from the cash value Hartshorn had previously accumulated by selectively liquidating profitable trades.

40. Although Hartshorn continued to trade Client A's account, Hartshorn was never able to make up the losses he sustained on or around January 16, 2008; the account was entirely depleted by May 2009.

2. Hartshorn Lost Client B's Funds Trading Foreign Currency

41. In or around 2009, Hartshorn lost $150,000 trading forex on behalf of Client B, whom Hartshorn solicited to invest in forex. After the losses, Hartshorn signed an agreement admitting to losing $150,000 trading Client B's account and receiving a commission of $18,972 from Client B. That agreement, dated July 2009, stated that "[i]n the course of trading the British Pound in pair with the Japanese Yen currencies, I, Brett Hartshorn . . . am responsible for losses suffered by [Client B] as follows: Principal sum of $150,000 [and] Commission paid of . . . 18,972."

42. Hartshorn never disclosed to Client B that he, Hartshorn, had incurred losses trading forex on behalf of other clients.

3. Hartshorn Made False Statements and Material Omissions to Client C and Lost Client C's Funds Trading Forex

43. In or around early 2009, Hartshorn solicited Client C to invest in forex. Hartshorn falsely told Client C that he, Hartshorn, had successfully traded forex.

44. Hartshorn never disclosed to Client C that he, Hartshorn, had incurred losses trading forex on behalf of other clients.

45. Hartshorn agreed to exercise discretion over Client C's forex account in exchange for a percentage of profits earned.

46. Client C told Hartshorn, before he invested, that he, Client C, could not afford an erosion of his principal investment and again reiterated that point by email to Hartshorn on or around April 8, 2009: "I cannot afford an erosion of initial principal value so AT ALL COSTS as you are trading my account be very conservative as it relates to stops and limits on the downside for me."

47. On or around April 7, 2009, Client C deposited approximately $50,000 into Client C's forex trading account, and Client C gave Hartshorn the username and password for the account so that Hartshorn could access the account and make trading decisions with respect to the deposited funds.

48. On or around May 1, 2009, Client C paid Hartshorn approximately $5,418.

49. On or around May 31, 2009, Client C's account was subject to multiple margin calls because the account equity was too low to support the margin requirement on Client C's open positions. These margin calls resulted in the forcible liquidation of several of Client C's forex positions and one-day losses of over $83,000 from the cash value Hartshorn had previously

accumulated by selectively liquidating profitable trades, leaving an account balance of just over $3,000.

4. Hartshorn Made False Statements and Material Omissions to Client D and Lost Client D's Funds Trading Forex

50. In or around 2009, Hartshorn solicited Client D to invest in foreign currency. Hartshorn falsely told Client D that he, Hartshorn, was skilled at trading foreign currency, that he would trade Client D's account very conservatively, and that the account would never be in a position to lose more than $1,000 at one time. These statements were false and misleading because Hartshorn had in fact suffered losses – often large single-day losses well in excess of $1,000, trading forex on behalf of others.

51. Hartshorn never disclosed to Client D that he, Hartshorn, had incurred losses trading forex on behalf of other clients.

52. Hartshorn agreed to exercise discretion over Client D's forex account in exchange for a percentage of profits earned in the account.

53. On or about June 9, 2009, Client D deposited $100,000 (that Client D had borrowed from his father) into Client D's corporate account. Hartshorn had authority to trade Client D's corporate account.

54. On or about June 12, 2009, Client D paid Hartshorn approximately $685. On or about June 19, 2009, Client D paid Hartshorn approximately $5,500.

55. On or around July 7, 2009, Client D's account was subject to multiple margin calls because the account equity was too low to support the margin requirement on Client D's open positions. These margin calls resulted in the forcible liquidation of several of Client D's forex positions, and one-day losses of over $97,000 from the cash value Hartshorn had

previously accumulated by selectively liquidating profitable trades, leaving an account balance of just over $5,000. By in or around July 20, 2009, the account was almost entirely depleted.

5. Hartshorn Made False Statements and Material Omissions to Clients E and F and Lost Their Funds Trading Forex

56. In or around 2009 and early 2010, Hartshorn solicited Clients E and F to invest in forex. Hartshorn falsely told Clients E and F that he, Hartshorn, had successfully traded forex on behalf of himself and others. Hartshorn never disclosed to Clients E and F that he, Hartshorn, in fact had incurred hundreds of thousands of dollars in losses trading forex on behalf of other clients.

57. Hartshorn agreed to exercise discretionary trading over the forex trading account of Clients E and F in exchange for a percentage of trading profits.

58. On or around January 29, 2010, Clients E and F deposited approximately $80,000 into their foreign currency trading account and gave Hartshorn the username and password for the trading account so that he could access the account and make trading decisions with respect to the funds of Clients E and F.

59. Clients E and F paid fees to Hartshorn based on what Hartshorn claimed was his share of profits in their trading account: they paid Hartshorn $5,823.94 on or around February 5, 2010; $3,686.92 on or around February 16, 2010; $4,876.37 on or around February 24, 2010; $8,280.26 on or around March 3, 2010; $3,061.74 on or around March 16, 2010; and $2,946.07 on or around March 27, 2010, for a total of $28,675.30.

60. Hartshorn calculated his share of "profits" without considering the value of open positions in Clients E and F's forex account. Consequently, notwithstanding his supposed "profit" sharing arrangement, Hartshorn charged Clients E and F substantial fees even as their trading account was declining in value.

61. For example, although the Clients E and F's account equity (i.e., the sum of the cash in the account plus the value of open trading positions) increased from January 29, 2010 to February 24, 2010, Clients E and F's account equity declined thereafter. Nevertheless, as set forth above in paragraph 59, Hartshorn charged Clients E and F an additional $14,288 in fees after February 24, 2010.

62. As the equity value of their trading account continued to decline, Hartshorn solicited Clients E and F to deposit additional funds into their forex trading account.

63. On or around April 1, 2010, Clients E and F deposited an additional $20,000 in an effort to reduce losses in their forex trading account. Hartshorn continued to make all trading decisions in their account.

64. On or around April 2, 2010, Client E emailed Hartshorn:

> All the money I have in the world has gone into this . . . account . . . Based on my review of the account summary, you have a large amount of floating [positions]. While I have continuously seen modest and steady gains, the recent reversal in profits which has amounted to a $35,000[] loss in less than a day has shaken my confidence. I have suffered and continue to suffer and cannot afford to lo[]se this money.

65. On or around April 6, 2010, Client E emailed Hartshorn: "Brett, We have talked to others many people . . . It is just as I thought the equity is the only thing we can count on. You said from day one you were very conservative with the accounts you work on. You have done the exact opposite. [Y]ou have leveraged . . . the account to the max. Bring up the Equity!!"

66. On or around April 6, 2010, Hartshorn replied:

> I'm doing my best. I have never scammed anyone in my life. Pretty strong language on your part. I will continue to do my all for you, . . . other accounts, and my own account. Have your friend at the state dept look me up . . . **they don't just give six different securities licenses to people who don't deserve them. I have been managing money since 1988. All managers have success and failure. I have had[ ]a[ ]lot of success and very little failure in[m]y career.**

(Emphasis added.)

67. On or around April 8, 2010, Client F emailed Hartshorn:

> [W]e need to sit down and discuss concerns [Client E] and I have regarding our account . . . . To say the least, the loss of approximately $35,000 from the account on April 1 was a total shock. That is why we were deeply concerned . . . . You had stated to us that there would be ups and downs in the account but that it was positioned well against cataclysmic events. The $35,000[] loss in less tha[n] 12 hours we considered cataclysmic. When you asked that more funds be deposited into the account to "save it", was also a shock. You asked what was comfortable for us to wire into our account and I said that I would put in $20,000 which I did immediately after our phone conversation on that Thursday of April 1. That money was actually from an account that was really not to be used as a great portion of it will be required by us shortly . . . [A]s of this afternoon, the equity has dropped to $37.9K . . . .**I[t] appears that you are using these temporary funds extensively possibly to bring up the account but this decrease in equity concerns us greatly.**

(Bold in original; underline emphasis added.)

68. On or around April 23, 2010, Client E emailed Hartshorn:

> [Client F] told you we need the temporary funds we put in the account back as it was a stop gap measure when the account went down we need the funds in a very short time . . . . You are going in the opposite direction.

69. In that email, Client E told Hartshorn that their purported "profit" sharing arrangement was not fair and that Hartshorn had overcharged Clients E and F. Client E stated that according to industry standards a trader should be "paid on the equity and not the balance," that "[w]e have over paid you money in the $19,000 range[, and that t]his account is in trouble by the way you have leveraged most of the e[]quity."

70. Client E further stated that "[a]s it stands now the way you have everything leveraged we only win if the trend reverses itself and goes the other way and this may not happen in the near future. We stand a chance to lo[]se everything and that **can not happen!!!!**" (emphasis in original).

71. Days later, Clients E and F closed their account, sustaining significant losses as a result of Hartshorn's trading.

6. Hartshorn Made False Statements and Material Omissions to Client G and Lost Client G's Funds Trading Forex

72. In or around 2010, Hartshorn solicited Client G to invest in forex. Hartshorn falsely told Client G that he, Hartshorn, had previously been successful trading forex. Hartshorn further falsely or misleadingly stated that he was making $300 to $1,000 a night trading and that Hartshorn was making his living trading forex, without disclosing to Client G Hartshorn's true history of losses trading forex on behalf of clients. Upon information and belief, Hartshorn also told Client G that he, Hartshorn, had successfully traded forex on behalf of a bank, which upon information and belief, is not true.

73. Hartshorn never disclosed to Client G that he, Hartshorn, had incurred hundreds of thousands of dollars in losses trading forex on behalf of other clients.

74. Hartshorn agreed to exercise discretionary trading authority over Client G's forex account in exchange for a percentage of trading profits earned.

75. On or around November 16, 2010, Client G deposited approximately $100,000 into Client G's forex trading account, and Client G gave Hartshorn the username and password for the trading account so that Hartshorn could access the account and make trading decisions with respect to the deposited funds.

76. On or around November 10, 2010, Client G paid Hartshorn approximately $3,738.

77. As a result of Hartshorn's trading, Client G's account was the subject of several margin calls because the account equity was too low to support the margin requirement on Client D's open positions, resulting in the forcible liquidation of forex positions on or around April 27, 2011 and one-day losses of over $51,000.

78. In all, Hartshorn lost more than $77,000 trading Client G's account, leaving the account with a cash balance of approximately $2,000 as of November 18, 2011.

7. Hartshorn Made False Statements and Material Omissions to Client H, Lost Client H's Funds Trading Forex, and Misappropriated Client H's Funds

79. In or around 2011, Hartshorn solicited Client H to invest in forex. Hartshorn falsely told Client H that he, Hartshorn, had successfully traded forex on behalf of others and that he would minimize the risk of loss to Client H by using stops (a "stop" is an order to close a trade when the market moves against the position) which would be triggered if forex trading losses exceeded a certain percentage. Rather than using stops as he represented to Client H, Hartshorn in fact most often used market orders (a "market order" is simply an order to buy or sell at the price available at that time) when trading Client H's funds (just as he had also previously done with other clients).

80. Hartshorn never disclosed to Client H that he, Hartshorn, had incurred hundreds of thousands of dollars in losses trading forex on behalf of other clients.

81. On or about August 15, 2011, Hartshorn and Client H entered into a written agreement pursuant to which "Hartshorn will manage proceeds given him by [Client H] in his [i.e., Hartshorn's] trading account. Any profits will be split equally between both parties."

82. On or around August 15, 2011, Client H wrote Hartshorn a check for $50,000 to be used by Hartshorn to trade in Hartshorn's personal forex account, for the benefit of Client H. Hartshorn deposited $50,000 into Hartshorn's personal forex trading account on or around August 24, 2011. Hartshorn had exclusive authority to trade, and in fact made all trading decisions with respect to Client H's funds.

83. Hartshorn told Client H that he, Hartshorn, would provide regular reports concerning the performance of Client H's funds. Although Hartshorn provided updates initially, he soon stopped providing regular updates to Client H.

84. On or around December 7, 2011, Client H provided an additional $36,000 to Hartshorn to be used by Hartshorn to trade forex based on Hartshorn's representation to Client H that Hartshorn's trading of Client H's funds had been profitable.

85. In reality, as of December 7, 2011, Client H's $50,000 investment had been almost entirely depleted by trading losses, by fees, and by withdrawals of at least $16,106 from Hartshorn's forex trading account into Hartshorn's personal bank account. These withdrawals included:

a. a withdrawal of approximately $2,073 from Hartshorn's forex trading account on or around August 29, 2011 (the equity value of the trading account had fallen to approximately $49,127 the previous day);

b. a withdrawal of approximately $4,091 from Hartshorn's forex trading account on or around September 2, 2011 (the equity value of the trading account the previous day was approximately $54,497);

c. a withdrawal of $2,844 from Hartshorn's forex trading account on or around September 22, 2011, the day after the trading account was subject to margin calls resulting in one-day losses of over $32,000 leaving a total account equity of just over $15,000;

d. a withdrawal of $3,372 from Hartshorn's forex trading account on or around October 10, 2011, the same day the trading account was subject to margin calls resulting in one-day losses of over $11,500; and

e. a withdrawal of $3,725 from Hartshorn's forex trading account on or around October 26, 2011 (the equity value of the trading account the previous day had fallen to just over $4,000).

86. Although Client H and Hartshorn agreed that Hartshorn would withdraw 50% of profits generated by Hartshorn's trading of Client H's funds, Hartshorn withdrew at least $12,014 from Hartshorn's forex account when the account was in fact incurring losses. Therefore, Hartshorn's withdrawal of these funds into his personal bank account constituted a misappropriation of client funds for Hartshorn's own personal benefit.

87. Hartshorn accepted Client H's additional investment of $36,000 on or around December 7, 2011, but failed to disclose to Client H that Client H's original investment had been entirely depleted by trading losses, fees, and withdrawals by Hartshorn.

88. Moreover, although Client H provided the additional $36,000 on or around December 7, 2011 to be invested in forex, Hartshorn did not use those funds to trade forex, but rather misappropriated the funds for his own personal benefit.

8. Hartshorn Made False Statements and Material Omissions to Client I and Lost Client I's Funds Trading Forex

89. In or around 2011 and 2012, Hartshorn solicited Client I to invest in forex. Hartshorn agreed to exercise discretionary trading authority over Client I's forex trading account in exchange for a percentage of trading profits earned.

90. Hartshorn falsely told Client I that he, Hartshorn, would trade Client I's funds conservatively and that Client I's account could not fall below $20,000. Hartshorn also falsely told Client I that he, Hartshorn, had previously traded forex profitably on behalf of others.

91. On or around January 23, 2012, Client I deposited $15,000 into Client I's forex trading account. Client I deposited an additional $35,000 into Client I's forex trading account on

or around January 29, 2012. Client I gave Hartshorn the username and password for the trading account so that Hartshorn could access the account and make trading decisions with respect to the deposited funds.

92. Hartshorn did not disclose to Client I that Hartshorn had in fact lost hundreds of thousands of dollars trading forex on behalf of others but instead claimed to have successfully traded forex in the past. Nor did Hartshorn disclose to Client I that he, Hartshorn, had previously misappropriated for his own personal benefit thousands of dollars of client funds that had been entrusted to him for the purpose of trading forex.

93. On or around February 2, 2012, Client I paid Hartshorn approximately $3,575 (at which time Client I's total account equity had fallen to approximately $45,442).

94. Hartshorn's trading resulted in substantial losses in Client I's account. In total, as a result of Hartshorn's trading decisions, Client I's forex trading account suffered trading losses of approximately $37,817 (or more than 75% of Client I's principal investment) over the life of the account, from January 2012 to June 2013.

9. Hartshorn Made False Statements and Material Omissions to Client J

95. In or around 2012, Hartshorn solicited Client J to invest in forex. Hartshorn agreed to exercise discretionary trading authority over Client J's funds in exchange for a percentage of trading profits earned.

96. Hartshorn told Client J that he, Hartshorn, would be able to double the funds in Client J's forex account in a matter of months by trading forex and that Client J would never have more than a few thousand dollars at risk at a time when in fact Hartshorn had previously risked and lost many thousands of dollars of client funds in a single day.

97. Hartshorn falsely told Client J that he, Hartshorn would trade Client J's funds conservatively and that Hartshorn would not allow Client J's account to fall below $20,000. Hartshorn also falsely told Client J that he, Hartshorn, had previously traded foreign currency profitably on behalf of others.

98. Hartshorn never disclosed to Client J that Hartshorn had lost hundreds of thousands of dollars trading forex on behalf of others. Nor did Hartshorn disclose to Client J that he, Hartshorn, had previously misappropriated for his own personal benefit thousands of dollars of client funds that had been entrusted to him for the purpose of trading forex.

99. On or around March 14, 2012, Client J deposited approximately $40,000 into a forex trading account in the name of Client J's business, and Client J gave Hartshorn the username and password for the trading account so that Hartshorn could access the account and make trading decisions with respect to the deposited funds.

10. Hartshorn Made False Statements and Material Omissions to Clients K and L and Lost Their Funds Trading Foreign Currency

100. Sometime in or around October 2012, Hartshorn met Clients K and L, a married couple, at a church event. Thereafter, from in or around October 2012 to in or around November 2012, Hartshorn discussed forex trading with Clients K and L, falsely telling them that he, Hartshorn, traded forex for a living.

101. Hartshorn falsely told Clients K and L that he, Hartshorn, had been trading forex since around 2003 and that he had profitably traded forex on behalf of others. Hartshorn told Clients K and L that if they permitted him to use their funds to trade forex, no more than $5,000 would be at risk at any given time and that Hartshorn had invested in a timber business that could be tapped if necessary to reimburse losses in Client K and Client L's trading account.

102. Clients K and L told Hartshorn that they had a home equity line of credit. Hartshorn told Clients K and L that they should use their home equity line of credit to trade forex because they could earn more than enough trading forex to pay interest charges on the home equity line of credit.

103. Hartshorn agreed to exercise discretionary authority over the funds of Clients K and L in exchange for a percentage of profits earned.

104. On or around November 14, 2012, Hartshorn sent Client K instant messages touting Hartshorn's supposed trading successes (notwithstanding that at the very same time Client I's foreign currency account cash balance had dropped to around $750 as a result of Hartshorn's management). In those instant messages, Hartshorn stated that:

a. "Maybe we'll see you at church tonight. I am saving you a spot on my platform . . . Because I am going to bless you like I am blessing this new account [referring to another foreign currency account] which as you can see i opened on Nov. 6th. Mainly just 100.-200. At a time . . . but they add up. Get it going, because the ending days of 2012 will be very active in the Euro, which will be GREAT for us! God bless, bro!"

b. "Here is the fun part of that new account . . . hmm[.] Looks like a new car to me . . . Let's roll, Man ! Hope to see you tonight!"

105. Between October and November 2012, when Hartshorn was touting to Clients K and L his purported success trading foreign currency, the cash balance on Client I's account was at the same time falling to under $600 as a result of Hartshorn's trading.

106. Nevertheless, Hartshorn never disclosed to Clients K and L that Hartshorn had in fact lost hundreds of thousands of dollars trading forex on behalf of others, including Client I.

Nor did Hartshorn ever disclose to Clients K and L that he, Hartshorn, had previously misappropriated for his own personal benefit thousands of dollars of client funds that had been entrusted to him for the purpose of trading forex.

107. On or around November 20, 2012 (at which point the cash value of Client I's forex account had fallen to under $500), Clients K and L deposited $50,000 into their forex trading account and provided Hartshorn with the username and password to the account so that Hartshorn could access the account and make trading decisions with respect to the deposited funds. Hartshorn made all trading decisions with respect to the deposited funds of Clients K and L.

108. On or around November 21, 2012, Clients K and L paid Hartshorn approximately $1,713 by personal check (as of November 20, 2012, Client K and L's account equity, i.e., the total value of open trades plus cash in the account, was approximately $49,313).

109. On or around November 26, 2012 (at which point the cash value of Client I's forex trading account had fallen to under $300), Clients K and L deposited an additional $128,000 into their forex trading account. Hartshorn made all trading decisions with respect to these deposited funds.

110. On or around November 28, 2012, Hartshorn sent an instant message to Client K stating: "Hey Brohammer . . . Slow night last night because of the consumer spending number out later . . . Could make for a great day later. Feel free to bring me a check to church tonight . . . it's cool for me to see my reward whenever it's over a grand as we agreed. Very motivating!! These checks will eventually be five figures . . . how much fun will that be for both of us !"

111. On or around November 28, 2012, Clients K and L paid Hartshorn approximately $1,423 by personal check.

112. On or around November 29, 2012 (at which point the cash value of Client I's forex trading account had fallen to under $300), Clients K and L deposited an additional $32,000 into their forex trading account. Hartshorn made all trading decisions as to these deposited funds.

113. On or around December 6, 2012, Clients K and L paid Hartshorn approximately $1,881 by personal check.

114. On or around December 8, 2012, Clients K and L paid Hartshorn approximately $2,605 by personal check.

115. On or around December 16, 2012, Client K and Client L's forex trading account was subject of several margin calls because the account equity was too low to support the margin requirement on their open positions. These margin calls resulted in the forcible liquidation of forex positions and one-day losses of over $129,000, reducing the cash balance of their account to under $95,000.

116. After Client K learned of the losses, on or around December 18, 2012, Hartshorn sent Client K instant messages stating that:

a. "I made up part of the loss already and [I] have other trades about 600. In the money right now[.]"

b. "The truth is [I]'m working off losses and [I] want you to see the account where it was but with the end of the year there is not much going on so it will take a bit to get it back. **But make no mistake. I will get it back and this coming year will be the best year ever for currencies**" (emphasis added).

117. On or around December 18, 2012, Client K sent an instant message to Hartshorn making clear that Clients K and L decided to invest based on Hartshorn's claims of expertise and past profitability trading forex: "We fully trust that you know what you are doing, otherwise we would not have done this in the first place . . . ."

118. On or around December 20, 2012, Client K wrote to Hartshorn that "[w]e are just praying that the losses are going to be a lot less than the gains! Our feeling also is that we are willing to risk the money we personally have invested but we don't ever want to get into the money that belongs to the bank [referring to the funds obtained via Client K and Client L's home equity line of credit]. As long as that does not happen we will be fine. . . ."

119. In an effort to recoup their losses, Clients K and L continued to allow Hartshorn access to their forex trading account and to make trading decisions as to their funds.

120. On or around January 2, 2013, Client K and Client L's forex trading account was subject of several margin calls because the account equity was too low to support the margin requirement on their open positions. These margin calls resulted in the forcible liquidation of forex positions and one-day losses of over $73,000 (i.e., losses on just three trades that Hartshorn made on or around December 17, 2012), reducing the cash balance of the account to just over $35,000.

121. On or around January 2, 2013, Client K wrote to Hartshorn: "What is going on? Another huge loss??? We have hardly anything left! What are we supposed to do now? Needless to say we are freaking out now[ ]We have got to talk tonight[.]"

122. Hartshorn replied to Client K the same day:

> Sorry for what's going on... **I am trading as [I] always have since 2003**... The good news is [I] have trades in the money right now that are up $9,000. **I can without a doubt get you back to whole and beyond**... Stick with me... This will give God a chance to really show off[]! He knows our hearts, and a bible

> promise is f[o]r him t[o] prosper us and not destroy us and that everything we touch is an[n]ointed to grow… I stand with in in [sic] claiming the blood of Jesus over this account and all over the glory for the Kingdom that will come from the gains we make.

(Emphasis added.)

123. In an effort to recoup their losses, Clients K and L continued to allow Hartshorn to trade their forex trading account, and Hartshorn continued to make trading decisions as to the funds of Clients K and L.

124. After the trading losses that occurred on or around January 2, 2013, Hartshorn sent several instant messages to Client K indicating that Hartshorn was doing well trading the account:

a. On or around January 3, 2013, Hartshorn wrote: "We had a great day yesterday and we have positions in the money up $3,000."

b. On or around January 3, 2013, Hartshorn wrote: "Just banked another $9,000. The dollar is strengthening as I anticipated."

c. On or around January 16, 2013, Hartshorn wrote: "Hey bro... Just made $7,250.00 in your account…keeping at it… God's hand be upon us… Hey bro… D[i]d you ask [the broker] about lowering your margin requirements[ ]and your account only liquidating one position at a time in case [o]f severe market swings… These two things would have kept your account above 56k and we'd be over 75k right now[.]"

d. On or around January 29, 2013, Hartshorn wrote: "we banked $2,362.80 this morning."

125. Although Hartshorn did liquidate certain trades at a profit in January 2013, the open positions in the account varied widely in value from day to day such that the daily total equity in the account declined from January 3, 2013 to January 29, 2013.

126. In or around January 2013, Hartshorn asked Clients K and L for a personal loan. Clients K and L felt that if they did not lend Hartshorn funds, he might not continue his efforts to make up trading losses in their forex account. Clients K and L entered into a written loan agreement with Hartshorn, lending him $9,500, which Hartshorn agreed to pay back no later than May 25, 2013.

127. On or around February 26, 2013, Client K wrote to Hartshorn that "[the broker] is calling me recommending that I speak with a trading coach one on one to discuss trading strategies. What should I tell him? I don't even have a clue what I'm talking about!"

128. Hartshorn replied the same day: "I'm working on it... God promises t[o] prosper us and not destroy us... I stand with you on that scripture, bro. You can politely decline."

129. On or around February 27, 2013, Hartshorn sent an instant message to Client K, stating that "I am trying my best, [I] don't know why God's favor is off me. Please pray for God's hand to be on me [sic] trading, like it has been since 2003. I gave [sic] never had losses as of late."

130. On or around April 7, 2013 (when the cash balance of Client K and Client L's forex account had fallen to approximately $5,539), Hartshorn sent an instant message to Client K stating, among other things, "I am so ashamed of the situation I have you, and your wonderful family in . . . ."

131. On or around May 11, 2013, Client K sent an instant message to Hartshorn asking when Hartshorn would be able to repay the personal loan that Clients K and L had made to Hartshorn approximately in or around January 2013.

132. On or around May 24, 2013, the day before the personal loan was due, Hartshorn sent an instant message to Client K stating, among other things, that "[m]y sources to repay you have not come through yet, as I was promise[d], and therefore promised you."

133. On or around May 25, 2013 (when the cash balance of Client K and Client L's forex account had fallen to under $500), Hartshorn sent an instant message to Client K, among other things, continuing to claim, falsely, that Hartshorn had successfully traded forex on others' behalf prior to Clients K and L: "I wish you all had never met me...[I] wanted only to bless you all...[I] still don't know why God's hand of favor came off my trading **after all these great years of being blessed** a[n]d blessing others" (emphasis added).

134. Four days later, Hartshorn sent Client K an instant message, among other things, stating that he, Hartshorn, was still not able to repay the personal loan and claiming, falsely, that Hartshorn had traded successfully on behalf of others prior to Clients K and L:

> I don't have the money yet...[I]'m working on it. I have two sources that are working on getting it to me . . . Regarding [Hartshorn's wife]...my world is already collapsing around me, that would be the final straw on her back, that [I] borrowed money and didn't pay it back by the day [I] promised . . . **I don't know why God lifted his hand of favor off me in the currency market after all of these years of success, and I am very sorry you met me when that hand lifted**...[I] will get this debt settled ASAP.

(Emphasis added.)

135. In all, Clients K and L suffered trading losses of approximately $198,740 and paid Hartshorn a total of approximately $7,622 in fees.

136. Hartshorn never paid back the personal loan to Clients K and L and never compensated Clients K and L for the trading losses in their account or the fees that Clients K and L had paid to Hartshorn in connection with the trading of their account.

11. Hartshorn Made False Statements and Material Omissions to Client M, Lost Client M's Funds Trading Forex, and Misappropriated Client M's Funds

137. In or around 2012 and 2013, Hartshorn solicited Client M to invest in forex.

138. Hartshorn told Client M that Client M would get a $2,000 bonus from Hartshorn's Brokerage Firm if Client M deposited his funds into Hartshorn's forex account as opposed to opening Client M's own personal trading account. Hartshorn proposed that Client M deposit his funds into Hartshorn's personal forex trading account and that Hartshorn make all trading decisions with respect to Client M's funds.

139. Hartshorn agreed to exercise discretionary trading authority over Client M's funds in exchange for a weekly share of trading profits.

140. Hartshorn falsely told Client M that he, Hartshorn, had successfully traded forex on behalf of others and that Client M would be protected from losses because Hartshorn would trade only the profit in the account and not the principal.

141. On or around February 25, 2013, Client M wrote a personal check to Hartshorn for $20,000 for the purposes of trading forex, which Hartshorn deposited into Hartshorn's personal forex trading account on or around February 26, 2013.

142. Hartshorn never disclosed to Client M that Hartshorn had lost hundreds of thousands of dollars trading forex on behalf of others. Nor did Hartshorn disclose to Client M that he, Hartshorn, had previously misappropriated for his own personal benefit thousands of dollars that clients had entrusted to him for the purpose of trading forex.

143. From in or around February 26, 2013 to in or around May 2013, Hartshorn made all trading decisions with respect to Client M's funds that Hartshorn had deposited into Hartshorn's personal forex trading account.

144. During that time, Client M's $20,000 was almost entirely depleted by trading losses, fees, and withdrawals of over $15,000 by Hartshorn. These withdrawals included:

a. a withdrawal of approximately $3,975 on or around April 8, 2013, which Hartshorn deposited into his personal bank account and used for personal expenses, the day after the total equity value of the trading account had fallen to around $15,031;

b. a withdrawal of approximately $3,199 on or around April 30, 2013, which Hartshorn deposited into his personal bank account and used for personal expenses, the day after the total equity value of the trading account had fallen to around $9,027; and

c. a withdrawal of approximately $2,231 on or around May 20, 2013, which Hartshorn deposited into his personal bank account and used for personal expenses, the day after the total equity value of the trading account had fallen to just over $2,000.

145. Although Client M and Hartshorn agreed that Hartshorn would withdraw 50% of profits generated by trading Client M's funds in Hartshorn's trading account, Hartshorn withdrew at least $9,400 from the forex trading account when Hartshorn's account was generating losses trading Client M's funds. Therefore, Hartshorn's withdrawal of these funds into his personal bank account constituted a misappropriation of client funds for Hartshorn's own personal benefit.

B. Hartshorn Failed to Respond to Two Commission Subpoenas

146. On July 22, 2015 and January 22, 2016, the Commission issued administrative subpoenas to Hartshorn requesting, among other things, "all documents and communications that relate in any way to the trading of foreign currency . . . on behalf of yourself or on behalf of any other person . . . ."; documents "sufficient to identify . . . all individuals and/or entities on whose behalf you have traded foreign currencies"; and "documents and communications that relate in any way to the trading of foreign currencies on behalf of [Hartshorn] or on behalf of any other person . . . ."

147. Commission staff served the subpoenas on Hartshorn by overnight UPS and by email on July 22, 2015 and January 22, 2016, respectively. This complied with Commission Regulation 11.4(c)(1), 17 C.F.R. § 11. 4(c)(1), which permits administrative subpoenas to be served by, among other means, "any other method whereby actual notice is given . . . ."

148. These categories of documents included various documents that Hartshorn was required, as a CTA, to maintain and produce to the Commission pursuant to Commission Regulations 4.33 and 5.4, 17 C.F.R. § 4.33 and 5.4.

149. Hartshorn failed to timely produce any records in response to the Commission's subpoenas.

VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND REGULATIONS

COUNT ONE

Violations of Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C.§ 6b(a)(2)(A)-(C) (Fraud in Connection with Retail Forex Transactions)

150. Paragraphs 1 through 149 are re-alleged and incorporated herein by reference.

151. Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C), makes it "unlawful for any person, in or in connection with any order to make, or the making of, any contract for sale of any commodity for future delivery . . . that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market – (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement . . . [or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to an order or contract for or, in the case or paragraph (2), with the other person."

152. Section 2(c)(2)(C)(ii)(I) of the Act, 7 U.S.C. § 2(c)(2)(C) (ii)(I), effective June 18, 2008, provides, among other things, that the antifraud provisions of Sections 4b of the Act, 7 U.S.C. § 6b, apply to retail forex transactions described in Section 2(c)(2)(C)(i) of the Act, 7 U.S.C. 2(c)(2)(C)(i). In addition, while Section 4b of the Act, 7 U.S.C. § 6b, applies by its terms to contracts of sale for future delivery, Section 2(c)(2)(C)(iv) of the Act, 7 U.S.C. § 2(c)(2)(C)(iv), provides that Section 4b of the Act applies to forex transactions "as if" they were contracts of sale of a commodity for future delivery.

153. All of the forex transactions solicited and conducted by Hartshorn on or after June 18, 2008, alleged above, were retail transactions as described in Section 2(c)(2)(C)(i) of the Act, 7 U.S.C. § 2(c)(2)(C)(i), in that the transactions were in foreign currency; they were offered on a leveraged, margined, or financed basis; they were offered to non-ECPs; they did not result in actual delivery within 2 days; and they did not create an enforceable obligation to deliver

between a seller and a buyer that have the ability to deliver and accept delivery in connection with their line of business.

154. Hartshorn violated Section 4b(a)(2)(A) -(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C), with respect to forex transactions occurring on or after June 18, 2008, by cheating or defrauding or attempting to cheat or defraud clients, by willfully making false statements to clients, and by willfully deceiving or attempting to deceive clients, including by:

a. Telling clients (including Clients C, D, E, F, G, H, I, J, K, L, and M) that he, Hartshorn, had successfully traded foreign currency on behalf of himself and others, when in fact Hartshorn knew that he had lost large sums of money trading foreign currency on behalf of others;

b. Touting his experience and ability trading forex and failing to disclose to clients (including Clients C, D, E, F, G, H, I, J, K, L, and M) that he had lost money trading foreign currency on behalf of others;

c. Telling clients (including Client J) that he, Hartshorn, would be able to double their money and telling clients (including Clients D, H, I, J, K, L, and M) that there he would limit the risk of loss while trading their funds (in spite of the fact that Hartshorn had suffered losses – often large losses – trading forex on behalf of others);

d. Telling clients, including Clients C, D, E, F, G, H, I, J, K, L, and M, that he had profitably traded forex on behalf of himself and others and that he would split "profits" earned from trading their forex investments, but failing to disclose to these clients that under the purported "profit" sharing arrangement, Hartshorn could earn fees even as their forex investments incurred losses.

e. Telling Client H in or around December 2011 that Client H's forex investment (which Hartshorn was trading in Hartshorn's personal trading account) was performing profitably when Hartshorn knew that Client H's funds had been almost entirely depleted by trading losses, fees, and withdrawals by Hartshorn into Hartshorn's personal bank account; and

f. Misappropriating client funds that had been entrusted to Hartshorn for the purpose of trading foreign currency, including at least $48,014 from Client H and at least $9,400 from Client M.

155. Each material misrepresentation, material omission, and misappropriation of client funds, occurring on or after June 18, 2008, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(A)-(C), 7 U.S.C. § 6b(a)(2)(A)-(C).

COUNT TWO

Violations of Commission Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3) (Fraud in Connection with Retail Forex Transactions)

156. Paragraphs 1 through 155 are re-alleged and incorporated herein by reference.

157. Commission Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3), effective October 18, 2010, provides, in relevant part, that it "shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction: (1) To cheat or defraud or attempt to cheat or defraud any person; (2) Willfully to make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or (3) Willfully to deceive or attempt to deceive any person by any means whatsoever."

158. Commission Regulation 5.1(m), 17 C.F.R. § 5.1(m), effective October 18, 2010, defines a retail forex transaction as any account, agreement, contract or transaction described in Sections 2(c)(2)(B) or 2(c)(2)(C) of the Act, 7 U.S.C. §§ 2(c)(2)(B) or 2(c)(2)(C). A retail forex transaction does not include an account, agreement, contract or transaction in foreign currency that is a contract of sale of a commodity for future delivery (or an option thereon) that is executed, traded on or otherwise subject to the rules of a designated contract market or registered derivatives transaction execution facility.

159. All of the forex transactions solicited and conducted by Hartshorn alleged above were retail transactions as described in Section 2(c)(2)(C)(i) of the Act, 7 U.S.C. § 2(c)(2)(C)(i), in that the transactions were in foreign currency, they were offered on a leveraged, margined, or financed basis, they were offered to non-ECPs, they did not result in actual delivery within 2 days, and they did not create an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery in connection with their line of business. Nor were the forex transactions executed, traded on, or otherwise subject to the rules of any designated contract market or registered derivatives transaction execution facility. Consequently, all of the forex transactions alleged herein occurring after October 18, 2010 were retail forex transactions, pursuant to Commission Regulation 5.1(m), 17 C.F.R. § 5.1(m).

160. Hartshorn violated Commission Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3), with respect to forex transactions occurring on or after October 18, 2010, by cheating or defrauding or attempting to cheat or defraud clients, by willfully making false statements to clients, and by willfully deceiving or attempting to deceive clients, including by:

a. Telling clients (including Clients G, H, I, J, K, L, and M) that he, Hartshorn, had successfully traded foreign currency on behalf of himself and others,

when in fact Hartshorn knew that he had lost large sums of money trading foreign currency on behalf of others;

b. Touting his experience and ability trading forex and failing to disclose to clients (including Clients G, H, I, J, K, L, and M) that he had lost money trading foreign currency on behalf of others;

c. Telling clients (including Client J) that he, Hartshorn, would be able to double their money and telling clients (including Clients H, I, J, K, L, and M) that there he would limit the risk of loss while trading their funds (in spite of the fact that Hartshorn had suffered losses – often large losses – trading forex on behalf of others);

d. Telling clients, including Clients G, H, I, J, K, L, and M, that he had profitably traded forex on behalf of himself and others and that he would split "profits" earned from trading their forex investments, but failing to disclose to these clients that under the purported "profit" sharing arrangement, Hartshorn could earn fees even as their forex investments incurred losses.

e. Telling Client H in or around December 2011 that Client H's forex investment (which Hartshorn was trading in Hartshorn's personal trading account) was performing profitably when Hartshorn knew that Client H's funds had been almost entirely depleted by trading losses, fees, and withdrawals by Hartshorn into Hartshorn's personal bank account; and

f. Misappropriating client funds that had been entrusted to Hartshorn for the purpose of trading foreign currency, including at least $48,014 from Client H and at least $9,400 from Client M.

161. Each material misrepresentation, material omission, and misappropriation of client funds, occurring on or after October 8, 2010, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Commission Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3).

COUNT THREE

Violation of Section 4*o*(1) of the Act, 7 U.S.C. § 6*o*(1) (Fraud and Deceit by a CTA)

162. Paragraphs 1 through 161 are re-alleged and incorporated herein by reference.

163. During the Relevant Period, Hartshorn engaged in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery, security futures product, forex contract or swap for compensation or profit. Therefore, Hartshorn was a CTA as defined by Section 1a(12) of the Act, 7 U.S.C. § 1a(12).

164. Section 4*o*(1) of the Act, 7 U.S.C. § 6*o*(1), makes it unlawful for any CTA, whether registered with the Commission or not, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, (A) to employ any device, scheme or artifice to defraud any client or prospective client, or (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

165. Section 2(c)(2)(C)(ii)(I) of the Act, 7 U.S.C. § 2(c)(2)(C) (ii)(I), effective June 18, 2008, provides that the antifraud provisions of Section and 4*o* of the Act, 7 U.S.C. § 6*o*, apply to retail forex transactions described in Section 2(c)(2)(C)(i) of the Act, 7 U.S.C. 2(c)(2)(C)(i).

166. All of the forex transactions solicited and conducted by Hartshorn on or after June 18, 2008 alleged above were retail transactions as described in Section 2(c)(2)(C)(i) of the Act, 7

U.S.C. § 2(c)(2)(C)(i), in that the transactions were in foreign currency, they were offered on a leveraged, margined, or financed basis, they were offered to non-ECPs, they did not result in actual delivery within 2 days, and they did not create an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery in connection with their line of business.

167. Since at least June 18, 2008, Hartshorn violated Section 4*o*(1) of the Act, 7 U.S.C. § 6*o*(1) by, using the mails or other means or instrumentality of interstate commerce (including the internet, telephone, and cell phone), employing schemes to defraud clients and participants and engaging in transactions, practices, and courses of business that operated as a fraud or deceit upon clients and participants, including by:

a. Telling clients (including Clients C, D, E, F, G, H, I, J, K, L, and M) that he, Hartshorn, had successfully traded foreign currency on behalf of himself and others, when in fact Hartshorn knew that he had lost large sums of money trading foreign currency on behalf of others;

b. Touting his experience and ability trading forex and failing to disclose to clients (including Clients C, D, E, F, G, H, I, J, K, L, and M) that he had lost money trading foreign currency on behalf of others;

c. Telling clients (including Client J) that he, Hartshorn, would be able to double their money and telling clients (including Clients D, H, I, J, K, L, and M) that there he would limit the risk of loss while trading their funds (in spite of the fact that Hartshorn had suffered losses – often large losses – trading forex on behalf of others);

d. Telling clients, including Clients C, D, E, F, G, H, I, J, K, L, and M, that he had profitably traded forex on behalf of himself and others and that he would split "profits" earned from trading their forex investments, but failing to disclose to these clients that under the purported "profit" sharing arrangement, Hartshorn could earn fees even as their forex investments incurred losses;

e. Entering into a purported "profit" sharing agreement with clients, including Clients C, D, E, F, G, H, I, J, K, L, and M ,that operated as a fraud or deceit on those clients, in that Hartshorn failed to disclose that he could be compensated even as the clients' forex investments incurred losses;

f. Telling Client H in or around December 2011 that Client H's forex investment (which Hartshorn was trading in Hartshorn's personal trading account) was performing profitably when Hartshorn knew that Client H's funds had been almost entirely depleted by trading losses, fees, and withdrawals by Hartshorn into Hartshorn's personal bank account; and

g. Misappropriating client funds that had been entrusted to Hartshorn for the purpose of trading foreign currency, including at least $48,014 from Client H and at least $9,400 from Client M.

168. Each material misrepresentation, material omission, or misappropriation, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4*o*(1) of the Act, 7 U.S.C. § 6*o*(1).

COUNT FOUR

Violation of Section 2(c)(2)(C)(iii)(I)(bb) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb), and Commission Regulation 5.3(a)(3)(i), 17 C.F.R. 5.3(a)(3)(i)
(Failure to Register as a CTA)

169. Paragraphs 1 through 168 are re-alleged and incorporated herein by reference.

170. Section 2(c)(2)(C)(iii)(I)(bb) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb), prohibits a person from, among other things, exercising discretionary trading authority over retail forex accounts unless the person is registered as required by Commission Regulations.

171. Commission Regulation 5.3(a)(3)(i), 17 C.F.R. 5.3(a)(3)(i), effective October 18, 2010, provides that any CTA, as defined in Commission Regulation 5.1(e)(1), 17 C.F.R. § 5.1(e)(1), is required to register as a CTA.

172. Commission Regulation 5.1(e)(1), 17 C.F.R. § 5.1(e)(1), effective October 18, 2010, defines a CTA, for purposes of Part 5 of the Commission Regulations, 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] as defined in [Section 1a(18) of the Act, 7 U.S.C. § 1a(18)] in connection with retail forex transactions."

173. Regulation 5.1(m), 17 C.F.R. § 5.1(m), defines a retail forex transaction as any account, agreement, contract or transaction described in Sections 2(c)(2)(B) or 2(c)(2)(C) of the Act, 7 U.S.C. §§ 2(c)(2)(B) or 2(c)(2)(C). A retail forex transaction does not include an account, agreement, contract or transaction in foreign currency that is a contract of sale of a commodity for future delivery (or an option thereon) that is executed, traded on or otherwise subject to the rules of a designated contract market or registered derivatives transaction execution facility.

174. All of the forex transactions solicited and conducted by Hartshorn alleged above were retail transactions as described in Section 2(c)(2)(C)(i) of the Act, 7 U.S.C. § 2(c)(2)(C)(i),

in that the transactions were in foreign currency, they were offered on a leveraged, margined, or financed basis, they were offered to non-ECPs, they did not result in actual delivery within 2 days, and they did not create an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery in connection with their line of business. Nor were the forex transactions executed, traded on, or otherwise subject to the rules of any designated contract market or registered derivatives transaction execution facility. Consequently, all of the forex transactions alleged herein occurring after October 18, 2010 were retail forex transactions, pursuant to Commission Regulation 5.1(m), 17 C.F.R. § 5.1(m).

175. Hartshorn held himself out to the public as a CTA, including by soliciting clients, as alleged more fully above, to use their funds to trade foreign currency and to give Hartshorn discretionary authority to trade forex on their behalf for Hartshorn's profit or compensation.

176. With respect to the retail forex transactions, as alleged above, Hartshorn exercised discretionary trading authority over accounts for or on behalf of non-ECP clients. Hartshorn, therefore, was a CTA, as defined by Commission Regulation 5.1(e)(1), 17 C.F.R. § 5.1(e)(1), and he violated Commission Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i), by failing to register with the Commission as a CTA on and after October 18, 2010.

COUNT FIVE

Violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (Failure to Register as a CTA)

177. Paragraphs 1 through 176 are re-alleged and incorporated herein by reference.

178. By exercising discretionary trading authority over client accounts Hartshorn, for compensation or profit, engaged in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in any agreement, contract, or transaction described in 2(c)(2)(C)(i) of the Act, 7 U.S.C. § 2(c)(2)(C)(i).

Therefore, Hartshorn was a CTA as defined by Section 1a(12) of the Act, 7 U.S.C. § 1a(12) (effective July 16, 2011).

179. Section 4m(1) of the Act, 7 U.S.C. § 6m(1), provides that it shall be unlawful for any CTA, unless registered with the Commission, to make use of the mails or any means of instrumentality of interstate commerce in connection with his line of business as a CTA.

180. Hartshorn held himself out to the public as a CTA, including by soliciting clients, as alleged more fully above, to use their funds to trade foreign currency and to give Hartshorn discretionary authority to trade forex on their behalf for Hartshorn's profit or compensation.

181. By failing to register as a CTA and using any means or instrumentality of interstate commerce (including the telephone, text messaging, email, and the internet) in connection with his business as a CTA, since at least July 16, 2011, Hartshorn violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

COUNT SIX

Violation of Commission Regulations 4.30, 4.31, and 5.4, 17 C.F.R. §§ 4.30, 4.31 and 5.4 (Failure to Comply with Relevant CTA Requirements)

182. Paragraphs 1 through 181 are re-alleged and incorporated herein by reference.

183. Commission Regulation 5.4, 17 C.F.R. § 5.4, effective October 18, 2010, states that Part 4 of the CFTC's Regulations, 17 C.F.R. §§ 4.1, *et seq.*, applies to any person required to register as a CTA pursuant to Part 5 of the Commission's Regulations relating to retail forex transactions. Commission Regulation 5.4, 17 C.F.R. § 5.4, provides that the failure to comply with Part 4 of the Commission's Regulations constitutes a violation of both the applicable CTA regulations and of Commission Regulation 5.4, 17 C.F.R. § 5.4, itself.

184. Part 4 Commission Regulation 4.30, 17 C.F.R. § 4.30, prohibits a CTA, whether registered or not, from soliciting, accepting, or receiving from an existing or prospective client funds in the CTA's name.

185. Commission Regulation 4.31, 17 C.F.R. § 4.31, provides that each CTA registered or required to be registered under the Act must deliver or cause to be delivered to prospective clients a disclosure documents containing the information set forth in Commission Regulations 4.34 and 4.35, 17 C.F.R. §§ 4.34 and 4.35.

186. During the Relevant Period, Hartshorn, while acting as a CTA, violated Commission Regulations 4.30, 4.31, and 5.4, 17 C.F.R. §§ 4.30, 4.31, and 5.4, by: (1) soliciting, accepting, or receiving from existing or prospective client funds (including the funds of Clients H and M) in the CTA's name and (2) failing to deliver or cause to be delivered the required disclosure document to prospective clients.

COUNT SEVEN

Violation of Commission Regulation 1.31, 17 C.F.R. § 1.31 (Failure to Produce Books and Records)

187. Paragraphs 1 through 186 are re-alleged and incorporated herein by reference.

188. Commission Regulation 1.31, 7 U.S.C. § 1.31, requires a CTAs (both those registered and required to be registered) to produce records to the Commission that are required to be kept pursuant to the Act and Commission Regulations.

189. Commission Regulation 1.31(a)(2), 7 U.S.C. § 1.31(a)(2), provides that "[p]ersons required to keep books and records by the Act or by these regulations shall produce such record in a form specified by any representative of the Commission" and at the producing party's expense or to provide the materials to the Commission for reproduction.

190. Pursuant to Commission Regulation 4.33, 17 C.F.R. § 4.33, and Commission Regulation 5.4, 17 C.F.R. § 5.4, CTAs are required to maintain, among other things: (1) "the name and address of each client" of the CTA; (2) "[a]ll powers of attorney and other documents, or copies thereof, authorizing the [CTA] to direct the commodity interest account of a client"; (3) "[a]ll other written agreements, or copies thereof, entered into by the [CTA] with any client"; (4) "[a] list or other record of all commodity interest accounts of clients directed by the [CTA] and of all transactions effected therefore"; and (5) "[t]he original or a copy of each report, letter, circular, memorandum, publication, writing, advertisement or other literature or advice (including the texts or standardized oral presentations and of radio, television, seminar or similar mass media presentations) distributed or cause to be distributed by the [CTA] to any existing or prospective client . . . ."

191. As alleged above, a representative of the Commission sent administrative subpoenas to Hartshorn on July 22, 2015 and January 22, 2016. Those subpoenas requested documents that, as a CTA, Hartshorn was required to maintain, pursuant to Commission Regulations.

192. Specifically, the subpoenas requested, among other things, "all documents and communications that relate in any way to the trading of foreign currency . . . on behalf of yourself or on behalf of any other person . . . ."; documents "sufficient to identify . . . all individuals and/or entities on whose behalf you have traded foreign currencies"; and "documents and communications that relate in any way to the trading of foreign currencies on behalf of [Hartshorn] or on behalf of any other person . . . ."

193. Hartshorn failed to produce the requested documents or to make those documents available to the Commission for reproduction, thus violating Commission Regulation 1.31, 17 C.F.R. § 1.31.

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, and pursuant to its own equitable powers:

A. Enter an order finding that Hartshorn violated Sections 2(c)(2)(C)(iii)(I)(bb), 4b(a)(2)(A)-(C), 4m(1), and 4*o*(1) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(bb), 6b(a)(2)(A)-(C), 6m(1), and 6*o*(1), and Commission Regulations 1.31, 4.30, 4.31, 5.2(b)(1)-(3), 5.3(a)(3)(i), and 5.4, 17 C.F.R. §§ 1.31, 4.30, 4.31, 5.2(b)(1)-(3), 5.3(a)(3)(i), and 5.4;

B. Enter an order of permanent injunction restraining, enjoining and prohibiting Hartshorn from engaging in conduct in violation of Sections 2(c)(2)(C)(iii)(I)(bb), 4b(a)(2)(A)-(C), 4m(1), and 4*o*(1) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(bb), 6b(a)(2)(A)-(C), 6m(1), and 6*o*(1), and Commission Regulations 1.31, 4.30, 4.31, 5.2(b)(1)-(3), 5.3(a)(3)(i), and 5.4, 17 C.F.R. §§ 1.31, 4.30, 4.31, 5.2(b)(1)-(3), 5.3(a)(3)(i), and 5.4;

C. Enter an order of permanent injunction prohibiting Hartshorn from, directly, or indirectly:

1) Trading on or subject to the rules of any registered entity (as that term is defined by Section 1a(40) of the Act, 7 U.S.C. § 1a(40));
2) Entering into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3(yy), 17 C.F.R. 1.3(yy) (2014)), for accounts held in the name of Hartshorn or for accounts in which Hartshorn has a direct or indirect interest;

3) Having any commodity interests traded on Hartshorn's behalf;

4) 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;

5) Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling of any commodity interests;

6) Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such 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); and

7) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a)), 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 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9).

D. Enter an order requiring Hartshorn to disgorge to any officer appointed by the Court all benefits received from acts or practices that constitute violations of the Act and Regulations as described herein, including, but not limited to, salaries, commissions, loans, fees, revenues, and trading profits derived, directly or indirectly, plus pre-judgment interest thereon from the date of such violations, plus post-judgment interest;

E. Enter an order requiring Hartshorn to make full restitution, pursuant to such procedure as the Court may order, to every person or entity who sustained losses proximately caused by Hartshorn's violations (in the amount of such losses), as described herein, plus pre-judgment interest thereon from the date of such violations, plus post-judgment interest;

F. Enter an order directing Hartshorn to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between Hartshorn and any of the clients whose funds were received by him as a result of the acts and practices which constituted violations of the Act, as described herein;

G. Enter an order requiring Hartshorn to pay a civil monetary penalty under the Act, to be assessed by the Court, in an amount of not more than the greater of (1) triple the monetary gain for each violation of the Act and Commission Regulations or (2) $140,000 for each violation of the Act and Commission Regulations;

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

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

December 20, 2016

Respectfully submitted,

PLAINTIFF COMMODITY FUTURES TRADING COMMISSION

By: /s/ Linda Y. Peng
Linda Y. Peng
lpeng@cftc.gov
Senior Trial Attorney

R. Stephen Painter
spainter@cftc.gov
Chief Trial Attorney
(*Pro hac vice* admission application to be filed)

David W. MacGregor
dmacgregor@cftc.gov
Chief Trial Attorney
(*Pro hac vice* admission application to be filed)

Manal Sultan
msultan@cftc.gov
Deputy Director

Commodity Futures Trading Commission
140 Broadway, 19th floor
New York, NY 10005
(646) 746-9700
(646) 746-9940 (facsimile)