UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

FILED
ASHEVILLE, N.C.
APR 21 2015
U.S. DISTRICT COURT
W. DIST. OF N.C.

U.S. COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

OTC INVESTMENTS LLC, FOREX CURRENCY TRADE ADVISORS, LLC AND BARRY C. TAYLOR,

Defendants.

Case No. 1:15cv81

COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL MONETARY PENALTY, AND ANCILLARY EQUITABLE RELIEF

Plaintiff, the United States Commodity Futures Trading Commission ("Commission"), by its attorneys, alleges as follows:

I. SUMMARY

1. From at least August 1, 2011 through the present ("Relevant Period"), Barry C. Taylor ("Taylor"), individually and as principal and agent of OTC Investments, LLC ("OTC") and Forex Currency Trade Advisors, LLC ("FCTA") (collectively "Defendants"), have engaged in a fraudulent scheme in violation of the Commodity Exchange Act ("Act") to solicit more than $2.4 million from members of the public ("pool participants") to participate in a commodity pool that trades leveraged or margined retail off-exchange foreign currency contracts, commonly known as "forex."

2. As part of this illegal scheme, Defendants misappropriated pool participants' funds to enrich Taylor and pay his personal expenses, including but not limited to cash withdrawals or direct transfers of pool participants' funds from OTC and FCTA bank accounts in excess of $500,000 to Taylor's personal bank account. Taylor treated pool participants' funds as if they were his own personal funds, spending pool participants' money on homes, watches, restaurants, entertainment, and living expenses.

3. Defendants, directly and by word of mouth, solicited pool participants located in North Carolina and other states within the United States, and Canada.

4. Taylor, both individually and as principal and agent of OTC and FCTA, falsely guaranteed that pool participants and prospective pool participants would receive a minimum net return of 2% per month. He further falsely assured existing and prospective pool participants in a written document titled "Managed Account/Trading Fee Schedule" that Defendants would only receive "administrative fees and commissions" from "any profits remaining after the Applicant has received a minimum of 2% net return monthly on their account balance." Finally, Taylor falsely guaranteed in the same written prospectus that "the maximum loss to be sustained, at which time all trading shall cease, is fifteen percent (15%) of original principal."

5. In contravention of Taylor's false promises of steady profits and commissions and fees to be limited to periods of profitable trading in excess of 2% per month, Defendants have only traded a portion of pool participants' funds in forex, have engaged in overall unprofitable forex trading (generating net realized trading losses as of January 15, 2015 in

excess of $450,000) and instead misappropriated a significant portion of pool participants' funds.

6. Defendants knew, in fact, that there were no profits to distribute to pool participants, because Defendants have fraudulently engaged in a pattern of unprofitable forex trading and misappropriation of pool participant funds that have combined to generate overall pool losses far in excess of the promised maximum drawdown of 15%. Defendants periodically paid what they claimed to be quarterly "commission" checks or wire transfers, in amounts equivalent to the promised 2% net monthly returns, but in reality they did so using principal paid by other pool participants, in the manner of a Ponzi scheme.

7. In addition to the above-described fraudulent conduct, Defendants have also acted at all times during the relevant time period as an unlawfully unregistered commodity pool operator ("CPO"), by operating or soliciting funds, securities, or property for a pooled investment vehicle that is not an eligible contract participant ("ECP"), as defined by the Act , and that engages in retail forex transactions, without being registered as required by the relevant provisions in the Act and/or the Commission's Regulations ("Regulation").

8. By virtue of this conduct, and as more fully set forth below, Defendants have engaged, are engaging, and/or are about to engage in acts and practices that violate the anti-fraud and registration provisions of the Act and Regulations ("Regulation"), namely 4b(a)(2)(A) and (C), 4m(1), and 4*o*(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(A), (C), 6m(1), 6*o*(1) (2012); and Regulations 5.2(b)(1) and (3), 17 C.F.R. §§ 5.2(b)(1), (3) (2014).

9. During the Relevant Period, Taylor committed the acts and/or omissions alleged herein both in his individual capacity, and also within the course and scope of his

employment, agency, or office with Defendants OTC and FCTA. OTC and FCTA are therefore liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2013), as principals for Taylor's violations of the Act and/or Commission Regulations.

10. Accordingly, pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1 (2012), and Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (2012), the Commission brings this action to enjoin Defendants' unlawful acts and practices, to compel their compliance with the Act and the Regulations thereunder, and to enjoin them from engaging in any commodity related activity, as set forth below. In addition, Plaintiff seeks civil monetary penalties for each violation of the Act and Regulations, and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, an accounting, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

11. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Defendants will continue to engage in the acts and practices alleged in this Complaint, and similar acts and practices, as more fully described below.

II. JURISDICTION AND VENUE

12. This Court possesses jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), which authorizes the Commission to bring an action in proper district courts of the United States in order 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.

13. The Commission possesses jurisdiction over the forex solicitations and transactions at issue in this case pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), and Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (2012).

14. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because Defendants transact business in this District and certain transactions, acts, practices, and courses of business alleged in this Complaint occurred, are occurring, or are about to occur within this District.

III. PARTIES

15. Plaintiff **United States Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act and the Regulations promulgated thereunder. The Commission maintains its principal office at 1155 21st Street NW, Washington, DC 20581.

16. Defendant **Barry C. Taylor** is an individual who resides in Franklin, North Carolina, and is the operator and authorized trader of the commodity pools at OTC and FCTA. Taylor is also a principal of OTC and FCTA. Taylor has never been registered with the Commission in any capacity. Taylor is not an associated person ("AP") of a United States financial institution, registered broker or dealer, insurance company, financial holding company, or investment bank holding company as defined by the Act.

17. Defendant **OTC Investments LLC** is a Nevada corporation with its principal place of business located at 183 Industrial Park, Franklin, North Carolina 28734. OTC has

never been registered with the Commission in any capacity. OTC is not a United States financial institution, registered broker dealer, insurance company, financial holding company, or investment bank holding company, or an AP of such entities.

18. Defendant **Forex Currency Trade Advisors, LLC** ("FCTA") is a North Carolina corporation with its principal place of business located at 183 Industrial Park, Franklin, North Carolina 28734. FCTA has never been registered with the Commission in any capacity. FCTA is not a United States financial institution, registered broker dealer, insurance company, financial holding company, or investment bank holding company, or an AP of such entities.

IV. FACTS

A. Statutory and Regulatory Background

19. Section 1a(11) of the Act, 7 U.S.C. § 1a(11) (2012), defines a CPO, in relevant part, as any person who, for compensation or profit, engages in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests, including any commodity for future delivery, security futures product, swap, or forex agreement, contract, or transaction.

20. Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (2012), applies provisions of the Act to agreements, contracts, or transactions in forex. Specifically, Section 2(c)(2)(C)(iv) of the Act, 7 U.S.C. § 2(c)(2)(C)(iv) (2012), states that Section 4b of the Act,

7 U.S.C. § 6b, applies to forex agreements, contracts, or transactions "as if" they were contracts of sale of a commodity for future delivery.

21. Section 2(c)(2)(C)(ii)(I) of the Act, 7 U.S.C. § 2(c)(2)(C)(ii)(I) (2012), states that Sections 4b and 4*o* of the Act, 7 U.S.C. §§ 6b, 6*o* (2012), apply to pooled investment vehicles that are offered for the purpose of trading, or that trade, any forex agreement, contract, or transaction, and that involve persons or entities who are not ECPs.

22. Section 4b(a)(2)(A) and (C) of the Act, 7 U.S.C § 4b(a)(2)(A), (C) (2012), prohibits fraud in connection with any contract of 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.

23. Section 4*o*(1) of the Act, 7 U.S.C. § 6*o*(1) (2012), prohibits fraud by any CPO, or an associated person of a CPO, by use of the mails or any means or instrumentality of interstate commerce.

24. Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), makes it unlawful for any CPO, unless registered with the Commission, to make use of the mails or any means or instrumentality of interstate commerce in connection with the business of the CPO.

25. Section 2(c)(2)(C)(vii) of the Act, 7 U.S.C. § 2(c)(2)(C)(vii) (2012) provides that the Act applies to, and the Commission shall have jurisdiction over, an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract or transaction in foreign currency described in Section 2(c)(2)(C)(i) of the Act, 7 U.S.C. § 2(c)(2)(C)(i) (2012).

26. Section 1a(18)(A)(iv) of the Act, 7 U.S.C. § 1a(18)(A)(iv) (2012) defines an ECP, in relevant part, as a commodity pool that has total assets exceeding $5,000,000, and is formed and operated by a person subject to regulation under this Act, provided however that for purposes of Section 2(c)(2)(C)(vii), 7 U.S.C. § 2(c)(2)(vii) (2012), the term ECP shall not include a commodity pool in which any participant is not otherwise an ECP.

27. 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 is in excess of (I) $10,000,000, or (II) $5,000,000 and who enters into the agreement, contract or transaction in forex 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.

B. <u>Defendants' Solicitation and Acceptance of Pool Participants' Funds</u>

28. During the Relevant Period, Defendants operated an unregistered forex commodity pool that solicited and accepted at least twenty four (24) retail members of the public to become pool participants. At least one or more of these pool participants do not meet the financial requirements to qualify as an individual ECP.

29. During the Relevant Period, OTC and FCTA, by and through Taylor, solicited pool participants, by use of the mails and/or other means or instrumentalities of interstate commerce, to send money to bank accounts under Defendants' control for the purpose of trading margined or leveraged forex in a purported commodity pool operated by Defendants.

30. At Defendants' direction, pool participants deposited funds into bank accounts ending in *6465 and *9904, held in the name of OTC and FCTA, respectively, at United Community Bank, Inc.

31. By undertaking these solicitations and accepting funds for the commodity pool operated by OTC and FTCA, by and through Taylor, Defendants acted as a CPO.

32. As a result of these solicitations, during the relevant period, pool participants deposited an aggregate of approximately $2.4 million into OTC's and FCTA's bank accounts.

33. Defendants had trading accounts at two firms registered as Futures Commission Merchants ("FCM") and Retail Foreign Exchange Dealers ("RFED"): Forex Capital Markets, LLC ("FXCM") and Gain Capital Group, LLC ("Gain").

34. On or about February 14, 2013, Taylor individually and as the agent of OTC, opened and traded a foreign currency trading account at FXCM with account number ending in *2117 ("FXCM Trading Account"). In addition to the FXCM Trading Account, Defendants opened two additional accounts which did not trade. The FXCM Trading Account was a corporate account held in the name of, and for the benefit of, OTC, not for the commodity pool operated by Defendants.

35. At all relevant times, Taylor, individually and on behalf of OTC, controlled and directed the forex trading in the FXCM Trading Account.

36. On or about February 11, 2013, Taylor individually and as the agent of FCTA, opened and traded foreign currency trading accounts at Gain with account number ending in *7939 and account number ending in *5501 (collectively "Gain Trading

Accounts"). In addition to the Gain Trading Accounts, Defendants opened one additional account which did not trade. These Gain Trading Accounts were corporate accounts held in the name of, and for the benefit of, FCTA, not for the purported commodity pool operated by Defendants.

37. At all relevant times, Taylor, individually and on behalf of FTCA, controlled and directed the forex trading in the Gain Trading Accounts.

38. As part of the account opening process at Gain, an agent or employee of FCTA represented on Gain's "Corporate Entity Account Questionnaire" ("Questionnaire") in response to Questionnaire question number 7: "Are the deposited funds contributed solely by the entity and/or its principals/owners?" The agent or employee checked the "Yes" box. Questionnaire question number 7 explained that the meaning of checking the "Yes" box is:

> If yes, you affirm that <u>all assets</u> deposited or to be deposited in the account(s) are corporate proprietary funds resulting solely from:
> a. Paid in capital contributed by the firms owners/principals as disclosed in the customer application; and/or
> b. Net income and/or retained earnings resulting from regular business operations.
> (Emphasis in the original)

39. This representation was false because Taylor, on behalf of FCTA, was depositing pool participant funds into the Gain Trading Accounts and trading those funds.

40. During the Relevant Period, FXCM became suspicious about the FXCM Trading Account because the account received significant deposits from various sources that are indicative of individual deposits from pool participants, not a corporate account.

41. On November 5, 2014, FXCM notified Defendants that it was exercising its discretionary authority and closing the FXCM Trading Account based on its concerns over the nature of the FXCM trading account.

42. Between February 25, 2013 and November 6, 2014, the FXCM Trading Account incurred, on a net basis, realized trading losses of approximately $400,000.

43. When factoring in the results of all realized forex trades in the two Gain Trading Accounts used to trade some of the pool participants' funds, along with the net realized losses incurred in the FXCM account, Defendants have incurred net realized trading losses of over $450,000.

44. As of approximately March 31, 2015, the Gain Trading Accounts have only approximately $80,000 of pool participants' funds remaining, which Defendants are primarily using to margin leveraged forex transactions.

C. Defendants' Fraudulent Scheme

45. Throughout the Relevant Period, Defendants fraudulently represented to prospective pool participants that Defendants' forex trading offered an investment with limited risk and guaranteed returns, the latter of which pool participants would earn on a monthly basis and which would be paid out on a quarterly basis.

46. Defendants' represented to actual and prospective pool participants both verbally and in a document entitled: "OTC INVESTMENTS, LLC FOREX CURRENCY TRADE ADVISORS, LLC MANAGED ACCOUNT/TRADING FEE SCHEDULE" (emphasis in the original) ("Fee Schedule") in a section entitled "Managed Account/Trading Fees" that:

> The Administrative fees and commissions shall be, if any, limited to any profits remaining after the Applicant has received a minimum of 2.0% net return monthly on their account balance. The 2.0% minimum return shall be compounded on a monthly basis and paid quarterly. All payments to the Applicant shall be by wire transfer or certified funds.

47. Further, Defendants represented to actual and prospective pool participants both verbally and in the Fee Schedule in a section entitled "Managed Account/Trading Fees" that: "[t]he Maximum loss to be sustained, at which time all trading shall cease, is fifteen per cent (15%) of original principal."

48. Defendants communicated to pool participants that their funds were to be pooled for trading in forex and that returns would be derived from trading profits.

49. Defendants guaranteed a rate of return to pool participants of two percent pursuant to the Fee Schedule and representations from Taylor. This representation was material and induced actual and prospective pool participants to invest in this scheme.

50. In contravention of their fraudulent promises to pool participants and prospective pool participants, Defendants knowingly and fraudulently engaged in a pattern of misappropriation, overall unprofitable forex trading, and periodic issuance to pool participants of checks or wire transfers that they characterized as "commissions," but were in amounts equivalent to the promised 2% net monthly returns, intended by Defendants to lull and to deceive pool participants and to further the fraudulent scheme.

51. Defendants did not disclose the growing net realized trading losses to pool participants. Rather, Defendants either knowingly misrepresented or knowingly deceived

pool participants on multiple occasions during the Relevant Period, in person, via email, and via periodic account statements, that Defendants' forex trading was generally profitable.

52. During the Relevant Period, Defendants' misrepresentations prompted pool participants to provide Defendants at least $2.4 million for trading forex in the purported commodity pool operated by Defendants.

53. While Defendants initially deposited some of the pool participant funds they received from pool participants into the FXCM and Gain Trading Accounts, Defendants used only a portion of these funds for forex trading.

54. During the Relevant Period, instead of trading all of the pool participants' funds in forex as promised, Defendants misappropriated a substantial portion of pool participant funds for unauthorized purposes, including at least $500,000 in cash withdrawals and direct transfers from the OTC and FCTA corporate accounts for Taylor's personal expenses.

55. Defendants failed to disclose to pool participants that Defendants did not invest all pool participant funds as promised in forex trading.

56. Defendants also used pool participant funds to pay purported profits to pool participants in order to create the illusion that the trading was successful, when in fact it was not.

57. Defendants knowingly either misrepresented or attempted to misrepresent to existing and prospective pool participants, or willfully deceived or attempted to deceive existing and prospective pool participants, on multiple occasions during the Relevant Period, in person, via email, and via periodic account statements, that pool participants' total

principal investment was intact, although in reality, Defendants were consistently siphoning off pool participants' principal through their pattern of steady misappropriation, to facilitate Defendants' scheme of making quarterly Ponzi-like "commission" payments to lull and to deceive pool participants, and to conceal the losses from overall unprofitable forex trading.

58. On or about December 24, 2014, a pool participant requested a withdrawal of $125,000 from his account. This pool participant spoke and emailed with Taylor over the next few weeks about this requested withdrawal.

59. Taylor falsely misrepresented, or attempted to misrepresent, or deceived the pool participant, or attempted to deceive the pool participant, both verbally and via email, that the processing of this withdrawal request would be delayed because the pool's assets had been negatively affected by the economic distress caused by the Swiss government's decision to de-peg the Swiss Franc from the Euro on Jan 15, 2015.

60. On January 23, 2015, Taylor sent an email to one or more pool participants that stated in pertinent part: "I'm sending this email to all participants in the Global Forex Funds, LTD that our company trades currency on their behalf. Currently, due to the events of January 15th with the Swiss National Bank and the subsequent moves in the foreign exchange market and defaults by several of the brokerage firms, trading has been suspended. Hopefully, we will begin to trade again next week."

61. These claims by Taylor described above in paragraphs 59-60 were false because Taylor was aware that Defendants' account at FXCM had been closed by FXCM on November 7, 2015, approximately ten weeks before the de-pegging of the Swiss Franc from the Euro by the Swiss government had occurred, and Gain did not default, suspend trading,

or suffer other adverse effects due to this de-pegging. In fact, Taylor was actively continuing to trade forex at Gain, at the exact same time that he was falsely claiming to one or more pool participants that "trading has been suspended."

62. During the relevant period, Defendants knowingly issued, or caused to be issued, false account statements to one or more pool participants reporting profitable earnings in the pool, when in fact Defendants knew, or had to be aware, that there were in fact no such profitable earnings, and that there was instead, an overall significant decrease in the net value of the pool due to the combined effect of Defendants' misappropriation, unprofitable forex trading and "commission" payments in the manner of a Ponzi scheme.

63. At no time during the relevant time period did any purported commodity pool operated by Defendants qualify as an ECP. The purported commodity pools operated by Defendants during the relevant period are non-ECPs, and are therefore subject to the Commission's jurisdiction, because a) at no time during the relevant time period did any commodity pool have assets in excess of $5,000,000, b) at no time during the relevant time period was any purported commodity pool formed and operated by a person subject to regulation under the Act, because none of the Defendants were properly registered with the Commission as a CPO. Finally, any purported commodity pool operated by Defendants also did not qualify as an ECP, and is therefore subject to the Commission's jurisdiction, because one or more pool participants did not also qualify as an ECP, as defined by Section 1a(18)(A)(xi) of the Act, 7 U.S.C. 1a(18)(A)(xi) (2012).

D. Defendants Failed to Properly Register with the Commission

64. During the relevant period, Defendants acted as CPOs in that they solicited and accepted funds from pool participants for the purpose of engaging in retail forex transactions on a leveraged or margined basis.

65. None of the Defendants has ever been registered in any capacity with the Commission, nor are they one of the enumerated exempt entities including a United States financial institution, registered broker or dealer, financial holding company, or investment bank holding company or an AP of such entities as defined by the Act.

66. Accordingly, during the relevant period, Defendants unlawfully failed to register with the Commission as CPOs.

V. STATUTORY AND REGULATORY VIOLATIONS

COUNT I
VIOLATION OF SECTION 4b(a)(2)(A) and(C) OF THE ACT, 7 U.S.C. § 6b(a)(2)(A),(C) AND COMMISSION REGULATION 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3):
FRAUD IN CONNECTION WITH FOREX TRANSACTIONS
(AGAINST ALL DEFENDANTS)

67. The allegations in the foregoing paragraphs are incorporated by reference as if fully set forth herein.

68. Section 4b(a)(2)(A) and (C) of the Act, 7 U.S.C § 4b(a)(2)(A), (C) (2012), makes it unlawful for any person, in or in connection with any order to make, or the making of, any contract of 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;
>
> ***
>
> (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 any order or contract for or . . . with the other person[.]

69. Regulation 5.2(b)(1) and (3), 17 C.F.R. § 5.2(b)(1), (3) (2014), makes it 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; or (3) willfully to deceive or attempt to deceive any person by any means whatsoever.

70. As described herein, Defendants violated Section 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(2)(A), (C) (2012), and Regulation 5.2(b)(1) and (3), 17 C.F.R. § 5.2(b)(1), (3) (2014), by cheating or defrauding, or attempting to cheat or defraud, or willfully deceiving or attempting to deceive existing and prospective pool participants by their material false statements and omissions regarding Defendants' unprofitable trading, track record, by misappropriating pool participants' funds, and by failing to disclose that misappropriation to pool participants.

71. Taylor, acting both individually and as agent and principal of Defendants OTC and FCTA, engaged in the acts and practices described above using instrumentalities of interstate commerce, including but not limited to: the use of interstate wires for transfer of funds, websites, and other electronic communication devices.

72. Taylor, acting both individually and as agent and principal of Defendants OTC and FCTA, engaged in the acts and practices described herein willfully, knowingly, or with reckless disregard for the truth.

73. During the Relevant Period, the foregoing misappropriation, fraudulent acts, misrepresentations, omissions, and other unlawful conduct of Taylor occurred within the scope of his employment, office, or agency as agent or principal of Defendants OTC and FCTA. Therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012) and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2014), Defendants OTC and FCTA are liable for Taylor's violations of Sections 4b(a)(2)(A), (C) of the Act, 7 U.S.C. §6b(a)(2)(A), (C) (2012) and Commission Regulations 5.2(b)(1)-(c), 17 C.F.R. §§ 5.2(b)(1)-(3) (2014).

74. Each act of misrepresentation, material omission, or misappropriation including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(2)(A), (C) (2012) and Regulation 5.2(b)(1) and (3), 17 C.F.R. § 5.2(b)(1), (3) (2014).

COUNT II
VIOLATION OF SECTION 4*o*(1) OF THE ACT, 7 U.S.C. § 6*o*(1) (2012)
FRAUD BY A COMMODITY POOL OPERATOR
(AGAINST ALL DEFENDANTS)

75. The allegations in the foregoing paragraphs are incorporated by reference as if fully set forth herein.

76. Section 4*o*(1) of the Act, 7 U.S.C. § 6*o*(1) (2012), makes it unlawful for a CPO, or an associated person of a CPO, 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 participant or prospective client or participant; or

(B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

77. During the Relevant Period, Taylor, acting both individually and as agent and principal of Defendants OTC and FCTA, acted as a CPO because they have been engaging in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and, in connection therewith, solicited, accepted, or received funds, securities, or property from others for the purpose of trading forex.

78. Taylor, acting both individually and as agent and principal of Defendants OTC and FCTA, engaged in the acts and practices described herein willfully, knowingly, or with reckless disregard for the truth.

79. During the Relevant Period, the foregoing misappropriation, fraudulent acts, misrepresentations, omissions, and other unlawful conduct of Taylor occurred within the scope of his employment, office, or agency as agent or principal of Defendants OTC and FCTA. Therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012) and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2014), Defendants OTC and FCTA are liable for Taylor's violations of Sections 4*o*(1) of the Act, 7 U.S.C. §6*o*(1) (2012).

80. Each instance during the relevant period in which Defendants employed a device, scheme, or artifice to defraud or attempt to defraud any participant or prospective participant, or engaged in any transactions, practices, or a course of business which operated as a fraud or deceit upon actual and/or prospective pool participants, 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) (2012).

COUNT III
VIOLATION OF SECTION 4m(1) OF THE ACT, 6m(1) (2012)
FAILURE TO REGISTER AS A COMMODITY POOL OPERATOR
(AGAINST ALL DEFENDANTS)

81. The allegations in the foregoing paragraphs are incorporated by reference as if fully set forth herein.

82. Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), makes it unlawful for any CPO, unless registered with the Commission, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO.

83. During the Relevant Period, both Taylor individually, as well as OTC and FCTA, by and through Taylor and its other employees, principals, agents, and/or controlling persons, acted as CPOs because they operated or solicited funds, securities, or property for a commodity pool that was not an ECP and engaged in forex transactions. OTC and FCTA, by and through Taylor, acted as a CPO while failing to register with the Commission as a CPO in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012).

84. During the Relevant Period, the foregoing unlawful conduct of Taylor occurred within the scope of his employment, office, or agency as agent or principal of Defendants OTC and FCTA. Therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012) and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2014), Defendants OTC and FCTA are liable for Taylor's violations of Sections 4m(1) of the Act, 7 U.S.C. §6m(1) (2012).

VI. RELIEF REQUESTED

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

A. An order finding that Defendants violated Sections 4b(a)(2)(A) and (C), 4m, and 4*o*(1) of the CEA, 7 U.S.C. §§ 6b(a)(2)(A), (C), 6m, 6*o*(1) (2012); and Regulations 5.3(a)(2)(i), and 5.3(a)(2)(ii), 17 C.F.R. §§ 5.3(a)(2)(i), (ii) (2014);

B. An order of permanent injunction prohibiting Defendants, and any other person or entity associated with them, from engaging in conduct that violates Sections 4b(a)(2)(A) and (C), 4m, and 4*o*(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(A), (C), 6m, 6*o*(1) (2012); or Regulations 5.3(a)(2)(i), and 5.3(a)(2)(ii), 17 C.F.R. §§ 5.3(a)(2)(i), (ii) (2014);

C. An order of permanent injunction prohibiting Defendants, and any of their agents, servants, employees, successors, assigns, attorneys, and persons acting in active concert or participation with Defendants, including any successor thereof, from, directly or indirectly:

(1) Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2012));

(2) Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1)) ("commodity options"), security futures products, foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the CEA, 7 U.S.C. §§ 2(c)(2)(B), 2(c)(2)(C)(i)

(2012)) ("forex"), and/or swaps (as that term is defined in Section 1a(47) of the CEA, 7 U.S.C. § 1a(47) (2012)) for any Defendant's personal or proprietary account or for any account in which any Defendant has a direct or indirect interest;

(3) Having any commodity futures, options on commodity futures, commodity options, security futures products, forex contracts, and/or swaps traded on any Defendant'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 futures, options on commodity futures, commodity options, security futures products, forex contracts, and/or swaps;

(5) Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, forex contracts, and/or swaps;

(6) Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2014);

(7) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2014)), agent or any other officer or employee of any person

or entity registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2014);

(8) Engaging in any business activity related to commodity futures, options on commodity futures, commodity options, swaps, security futures products, and/or forex contracts;

D. An order directing Defendants, as well as any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices constituting violations of the Act and Regulations, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

E. An order directing Defendants, as well as any successors thereof, to make full restitution, pursuant to such procedure as the Court may order, to every customer or pool participant whose funds any Defendant received, or caused another person or entity to receive, as a result of the acts and practices constituting violations of the Act and Regulations, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

F. An order directing Defendants, as well as any successors thereof, to provide a full accounting of all pool participant funds they have received during the Relevant Period as a result of the acts and practices constituting violations of the Act and Regulations, as described herein;

G. An order directing Defendants, as well as any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether

implied or express, entered into between them and any customer or pool participant whose funds any Defendant received as a result of the acts and practices constituting violations of the Act and Regulations, as described herein;

H. An order directing Defendants, as well as any successors thereof, to pay a civil monetary penalty, plus post-judgment interest, for each violation of the Act and Regulations described herein, in the amount of the greater of: (i) $140,000 for each violation committed; or (ii) triple Defendants' monetary gain for each violation committed;

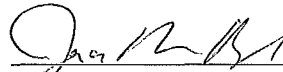
I. An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412 (2012); and

J. An order directing such further relief as the Court deems proper.

Date: 4/21/15

Respectfully Submitted,

by:



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