

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Plaintiff,

v.

LYNDON LYDELL PARRILLA,

Defendant.

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Civil Action No. 11-10621-JLT

MEMORANDUM

September 30, 2013

TAURO, J.

I. Introduction

Plaintiff United States Commodity Futures Trading Commission brings this suit against Defendant Lyndon Lydell Parrilla for injunctive relief, equitable relief, and penalties under the Commodity Exchange Act¹ (the “Act”). Presently at issue is Plaintiff’s Motion for Summary Judgment and for a Permanent Injunction and Other Equitable Relief Against Defendant [#38].

For the following reasons, the Motion is ALLOWED.

II. Background²

¹ 7 U.S.C. § 1.

² In accordance with Local Rule 56.1, Plaintiff filed a Statement of Material Facts in this case. See Statement Material Facts Supp. Pl.’s Mot. Summ. J. & Permanent Inj. & Other Equitable Relief Against Def. Lyndon Lydell Parrilla [#39] [hereinafter Facts]. Defendant did not object to this statement of facts. See Def.’s Mot. Opp’n Pl.’s Mot. Summ. J [#41] [hereinafter Opp’n]. In fact, Defendant did not even fully oppose Plaintiff’s motion for summary judgment. See Opp’n [#41]. For that reason, this court presents the background as presented by Plaintiff in its Statement of Material Facts. See Facts [#39].

Plaintiff is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act.³ Defendant was the owner, President, Secretary, Treasurer, and Director of Green Tree Capital (“Green Tree”), a defunct Nevada corporation incorporated on June 26, 2008.⁴

Prior to launching Green Tree, the National Futures Association (“NFA”)⁵ barred Defendant and a Commodity Trading Advisor (“CTA”) Defendant owned and operated from NFA membership.⁶ Defendant was registered with Plaintiff as an “Associated Person” of his CTA until its demise.⁷

Green Tree had a registered address in Woodland Hills, California.⁸ On its website and in bank documents, Green Tree purports to have its main business address on Wilshire Boulevard in Beverly Hills, California, and other offices at various times in Boston, Massachusetts, Las Vegas, Nevada, Montreal and Piedmont, Quebec, and London.⁹ Green Tree’s website, however,

³ Facts ¶ 9 [#39].

⁴ Id. ¶¶ 10, 15; see id. ¶ 1. Green Tree was previously a co-defendant in this action. On June 30, 2011, this court issued default judgment against Green Tree. See Default J. [#26].

⁵ The NFA is a not-for-profit membership corporation and is a self-regulatory organization that is registered with the Plaintiff as a futures association under section 17 of the Act. Facts, 6 n.3 [#39]. Plaintiff has delegated registration processing functions to the NFA on Plaintiff’s behalf. Id. The NFA conducts audits and investigations of NFA member firms, including registered CTAs and introducing brokers, to monitor for compliance with NFA rules, some of which incorporate by reference Plaintiff’s regulations. Id.

⁶ Facts ¶ 16 [#39].

⁷ Facts ¶ 17 [#39].

⁸ Facts ¶ 10 [#39].

⁹ Facts ¶ 11 [#39].

misrepresents the company's location.¹⁰ The office address listed in Woodland Hills is fictitious, and Green Tree uses an answering service named Ruby Receptionists located in Portland, Oregon to answer the phone number for its purported Beverly Hills office.¹¹ The answering service forwarded messages to Defendant's cell phone.¹² Moreover, Green Tree did not have offices in Boston, England, or Canada.¹³ Rather, Defendant and some Green Tree employees worked out of a house in Woodland Hills.¹⁴

From approximately October 2009 to approximately April or May 2011 (the "relevant time"), Green Tree, while operated by Defendant, acted as a CTA through the solicitation of customers or potential customers to open managed accounts to engage in retail off-exchange foreign currency ("forex") transactions on a leveraged or margined basis.¹⁵ Green Tree was never registered with Plaintiff in any capacity.¹⁶ Defendant has not been registered in any capacity with Plaintiff since January 5, 2010.¹⁷

Defendant was responsible for all of the key facets of Green Tree's operations, including the opening and management of Green Tree's bank and trading accounts and the hiring and

¹⁰ Facts ¶ 12 [#39].

¹¹ Facts ¶ 12 [#39].

¹² Facts ¶ 12 [#39].

¹³ Facts ¶ 12 [#39].

¹⁴ Facts ¶ 12 [#39].

¹⁵ Facts ¶ 13 [#39].

¹⁶ Facts ¶ 14 [#39].

¹⁷ Facts ¶ 17 [#39].

training of Green Tree employees, agents, and representatives who remained under his control and direction.¹⁸ Green Tree maintained several bank accounts into which customers transferred their funds.¹⁹

In October 2009, Defendant opened business checking and savings accounts, in the name of Green Tree, at Wells Fargo Bank (“Wells Fargo”).²⁰ In February 2010, Defendant opened a business checking account in the name of Green Tree at Sovereign Bank New England (“Sovereign”), and in July 2010, Defendant opened another business checking account and a money market savings account at Sovereign, both in the name of Green Tree.²¹ In August 2010, Defendant opened a business checking account in the name of Green Tree at Chase Bank (“Chase”), and in December 2010, Defendant opened a business checking account in the name of Green Tree at US Bank.²² Defendant was the sole signatory on all of the Green Tree bank accounts at Wells Fargo, Sovereign, Chase, and US Bank.²³

During the relevant time, Defendant solicited at least \$4.6 million from more than fifty customers purportedly to trade forex in managed accounts.²⁴ When speaking with Green Tree

¹⁸ Facts ¶ 18 [#39].

¹⁹ Facts ¶ 19 [#39].

²⁰ Facts ¶ 20 [#39].

²¹ Facts ¶ 21 [#39].

²² Facts ¶ 22 [#39].

²³ Facts ¶¶ 20, 21, 22 [#39].

²⁴ Facts ¶ 23 [#39].

customers, Defendant routinely used aliases.²⁵ Defendant directed most Green Tree customers to send funds for trading foreign currency to an account in the name of Green Tree at various banks, including Wells Fargo and Sovereign, and Green Tree accepted customer funds in Green Tree's name at those banks.²⁶

During part of the relevant time, Green Tree maintained a corporate trading account at FX High Summit ("FXHS"), purportedly a forex trading firm.²⁷ The account was in the name of Green Tree, and FXHS may have acted as a counterparty to Green Tree customer forex transactions made by Green Tree.²⁸ FXHS has never been registered with Plaintiff in any capacity.²⁹ Defendant traded a small portion of Green Tree customer funds at FXHS, and at least one Green Tree customer received account statements from FXHS purporting to represent the forex trading in a Green Tree account for the benefit of that customer.³⁰

The forex transactions neither resulted in deliveries of foreign currency nor created an enforceable obligation to deliver.³¹ Rather, these foreign currency contracts remained open from day to day and ultimately were offset without any entity or person making or taking delivery of

²⁵ Facts ¶ 24 [#39].

²⁶ Facts ¶ 25 [#39].

²⁷ Facts ¶ 26 [#39].

²⁸ Facts ¶ 26 [#39].

²⁹ Facts ¶ 26 [#39].

³⁰ Facts ¶¶ 27, 28 [#39].

³¹ Facts ¶ 29 [#39].

actual foreign currency or facing an obligation to do so.³²

Most of Green Tree's customers were not eligible contract participants as defined by the Act.³³ Green Tree's records also show that Green Tree was not a financial institution, registered broker dealer, insurance company, bank holding company, investment bank holding company, or an "Associated Person" of any such entity as defined by the Act.³⁴

When customers were convinced to open managed accounts to trade forex, Defendant instructed customers to send their funds to a pooled bank account in the name of Green Tree, either at Wells Fargo, Sovereign, or Chase.³⁵ Customer funds were not deposited into forex trading accounts in the customers' names.³⁶

Green Tree customarily structured its relationship with its customers using a two-document investment agreement involving a "Letter of Direction" ("LOD") and a "Limited Power-of-Authority and Risk Disclosure" ("POA").³⁷ The LOD provides that the "[C]ustomer hereby directs and grants discretion to [Green Tree] to enter trades on Customer's behalf."³⁸ Pursuant to the LOD, a customer chooses a trading model or system offered by Green Tree and

³² Facts ¶ 29 [#39].

³³ Facts ¶ 30 [#39].

³⁴ Facts ¶ 30 [#39].

³⁵ Facts ¶ 31 [#39].

³⁶ Facts ¶ 31 [#39].

³⁷ Facts ¶ 32 [#39].

³⁸ Facts ¶ 32 [#39].

authorizes Green Tree to engage in trades generated or recommended by that model.³⁹ The POA authorizes Green Tree “to buy and sell (including short sales) spot foreign currency exchange (Forex) contracts on margin or otherwise for Customer’s account.”⁴⁰

Defendant deposited only a small fraction of the funds received from customers into accounts for forex trading, sending a total of approximately \$752,000 to a pooled account in the name of Green Tree at FXHS.⁴¹ Besides the one pooled account at FXHS, neither Defendant nor Green Tree opened any other accounts to trade or invest customer funds in forex.⁴² Defendant’s trading in Green Tree’s account lost most of the funds sent to the FXHS account in connection with their forex trading.⁴³

In soliciting funds, Defendant made numerous misrepresentations and false statements to Green Tree customers via telephone and email, and Defendant *knew* he and Green Tree were making numerous false representations, omitting material facts, and providing customers with false account statements.⁴⁴ Defendant has misrepresented that Green Tree would invest customer funds in forex, had high investment returns, had substantial trading experience, managed many millions of dollars, and so forth.⁴⁵ Defendant falsely represented to at least one customer that

³⁹ Facts ¶ 32 [#39].

⁴⁰ Facts ¶ 32 [#39].

⁴¹ Facts ¶ 33 [#39].

⁴² Facts ¶ 33 [#39].

⁴³ Facts ¶ 33 [#39].

⁴⁴ Facts ¶¶ 34, 35 [#39].

⁴⁵ Facts ¶ 36 [#39].

Green Tree had seen returns of 150% to 300% and that Green Tree had \$30 million in customer assets.⁴⁶ In communications with other prospective customers, Defendant used similar falsehoods.⁴⁷ Defendant knew that all of these statements were false.⁴⁸ Green Tree did not have the returns, assets, and experience that it claimed.⁴⁹ Green Tree suffered trading losses through June 2010, and at its highest point, Green Tree had only about \$4 million in assets.⁵⁰ Green Tree was not incorporated until 2008 and was not active until October 2009.⁵¹

Defendant distributed or caused to be distributed to customers and prospective customers a false thirty-three page track record from an account that purportedly saw gains of 1000% from January 19, 2009 through February 26, 2010.⁵² This statement was completely fabricated: Green Tree was not active in January 2009 and sustained trading losses through June 2010.⁵³

Defendant told customers that they could withdraw funds from their accounts by giving

⁴⁶ Facts ¶ 37 [#39].

⁴⁷ Facts ¶ 38 [#39]. Such falsehoods included: Green Tree had \$75 million in assets; Green Tree had seven to twelve forex traders working six days per week, day and night; since Green Tree had opened, it had not lost any customer money and had seen annual returns of 250%; Green Tree had been investing in forex for five to six years and had 100% annual returns; and because Green Tree had such high returns, it had a 90% customer retention rate. Id.

⁴⁸ Facts ¶ 39 [#39].

⁴⁹ Facts ¶ 39 [#39].

⁵⁰ Facts ¶ 39 [#39].

⁵¹ Facts ¶ 39 [#39].

⁵² Facts ¶ 40 [#39].

⁵³ Facts ¶ 40 [#39].

notice to Green Tree.⁵⁴ This representation was also false: several of Green Tree's customers were unable to withdraw funds from their accounts despite their repeated requests to do so.⁵⁵ In fact, Green Tree's customers have, for the most part, been unable to close their accounts and get a full refund of the remaining balance of their funds.⁵⁶

When making these misrepresentations, Defendant knew that the statements were false or recklessly disregarded the truth.⁵⁷ Most of the misrepresentations were blatant fabrications, such as the purported track record that showed a 1000% return over a one-year period.⁵⁸

Defendant failed to disclose that he would not invest all of the customers' funds in forex trading but would instead convert most of those funds to his own personal use.⁵⁹ When Green Tree actually traded forex, it sustained substantial losses.⁶⁰ Further, Defendant did not disclose the trading losses to all prospective or actual customers.⁶¹ Defendant did not disclose that Green Tree

⁵⁴ Facts ¶ 41 [#39].

⁵⁵ Facts ¶ 41 [#39].

⁵⁶ Facts ¶ 42 [#39]. The POA provides that any customer can terminate his or her account by giving written notice to Green Tree at Green Tree's main Boston office. Id. Green Tree did not have an office in Boston. Id. After making numerous oral and written requests, at least two customers have been unable to withdraw the funds that they deposited with Green Tree. Id.

⁵⁷ Facts ¶ 45 [#39].

⁵⁸ Facts ¶ 45 [#39].

⁵⁹ Facts ¶ 46 [#39].

⁶⁰ Facts ¶ 46 [#39].

⁶¹ Facts ¶ 47 [#39].

was not registered and that the NFA permanently barred Defendant from membership.⁶²

To disguise the misappropriation and the trading losses, Defendant emailed or caused to be mailed false account statements to Green Tree customers.⁶³ The statements consistently reflected that customers were earning substantial returns, when in fact Green Tree has not achieved the purported profits reflected in these statements.⁶⁴ The statements consistently reflected that a customer's full investment was in use in the account, when in fact Defendant misappropriated a substantial portion of that money.⁶⁵

During the relevant time, approximately \$4,630,713 was deposited into Wells Fargo, Sovereign, Chase, and US Bank accounts in the name of Green Tree from identifiable investors.⁶⁶ Funds withdrawn or returned to Green Tree investors totaled approximately \$433,371.⁶⁷ The total amount lost by investors in Green Tree is thus approximately \$4,197,342.⁶⁸ Defendant has misappropriated at least \$3,353,925 of the pooled customer funds in the Green Tree bank accounts for his own personal automobile purchases, entertainment expenses, debit card purchases, ATM or cash withdrawals, Las Vegas casino expenses, clothing purchases, and other

⁶² Facts ¶ 47 [#39].

⁶³ Facts ¶ 48 [#39].

⁶⁴ Facts ¶ 48 [#39].

⁶⁵ Facts ¶ 48 [#39].

⁶⁶ Facts ¶ 55 [#39].

⁶⁷ Facts ¶ 55 [#39].

⁶⁸ Facts ¶ 55 [#39].

personal, non-business expenses.⁶⁹ Much of the money that Defendant used to finance his extravagant lifestyle came from retirees or their individual retirement accounts.⁷⁰

On March 1, 2011, Defendant sent an email to Green Tree customers that stated: “Due to being defrauded by multiple investments, Green Tree Capital has become insolvent. All operations have ceased. We deeply regret informing you of this and we apologize for the loss that this brings.”⁷¹ Defendant sent this email in an effort to mislead Green Tree customers and to dissuade them from taking action against him.⁷²

On April 12, 2011, Plaintiff commenced this action against Defendant.⁷³ On April 13, 2011, this court issued an ex parte restraining order and asset freeze against Defendant and Green Tree.⁷⁴ On April 27, 2011, this court issued an order extending the restraining order.⁷⁵

On May 11, 2011, an Indictment was returned against Defendant on parallel criminal charges.⁷⁶ On July 23, 2012, Defendant entered a “blind” plea of guilty to all seven counts of the

⁶⁹ Facts ¶ 56 [#39].

⁷⁰ Facts ¶ 56 [#39].

⁷¹ Facts ¶ 57 [#39].

⁷² Facts ¶ 58 [#39].

⁷³ Facts ¶ 2 [#39]; see Compl. Injunctive & Other Equitable Relief & Penalties Commodity Exchange Act [#1] [hereinafter Compl.].

⁷⁴ Facts ¶ 3 [#39]; see Ex Parte Statutory Restraining Order [#4].

⁷⁵ Facts ¶ 3 [#39]; see Order Extending Ex Parte Statutory Restraining Order [#13].

⁷⁶ Facts ¶ 5 [#39]. The Indictment alleges that from at least August 2010 to May 2011, Defendant knowingly devised a scheme to defraud and to obtain money and property by means of material false and fraudulent pretenses, representations, and promises that were transmitted in interstate commerce. Facts ¶ 6 [#39]. The Indictment charges Defendant with seven counts of

Indictment.⁷⁷ On November 20, 2012, Judge O'Toole sentenced Defendant to, among other things, a term of ninety-seven months' imprisonment and ordered him to pay restitution in the amount of \$4,675,156.⁷⁸ Defendant has filed a notice of appeal.⁷⁹

III. Discussion

A court will “grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”⁸⁰ That is, a court must grant summary judgment if “the record taken as a whole could not lead a rational trier of fact to find for the non-moving party.”⁸¹

Here, there is no dispute whatsoever as to any fact at all. Defendant did not contest Plaintiff's Statement of Material Facts, and indeed only partially opposed Plaintiff's motion for summary judgment. Summary judgment is thus appropriate in this case.

A “prior criminal conviction may work an estoppel in favor of the Government in a subsequent civil proceeding.”⁸² For collateral estoppel to apply, a court must find that

wire fraud and two counts of money laundering. Facts ¶ 6 [#39].

⁷⁷ Facts ¶ 6 [#39].

⁷⁸ Facts ¶ 7 [#39].

⁷⁹ Facts ¶ 7 [#39].

⁸⁰ Fed. R. Civ. P. 56(a).

⁸¹ Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). Further, if the non-moving party “fails to make a showing sufficient to establish the existence of an element essential to that party's case,” there is no genuine issue as to any material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322–23 (1986).

⁸² Glantz v. United States, 837 F.2d 23, 25 (1st Cir. 1988) (quoting Emich Motors Corp. v. Gen. Motors Corp., 340 U.S. 558, 568–69 (1963)); see United States v. Podell, 572 F.2d 31,

(1) the issues in both proceedings are identical, (2) the issue in the prior proceeding was actually litigated and actually decided, (3) there was full and fair opportunity to litigate the prior proceeding, and (4) the issue previously litigated was necessary to support a valid and final judgment on the merits.⁸³

The issues in Defendant's criminal trial and in this proceeding are identical, and these issues were necessary to support a valid and final judgment on the merits.⁸⁴ Defendant's convictions of wire fraud and money laundering stemmed from his perpetrating a fraud scheme by soliciting Green Tree customers to invest in foreign currency transactions, misappropriating investor funds, and issuing false statements to cover up the misappropriation. Plaintiff's allegations with respect to Defendant's fraudulent acts closely track his criminal charges. Both the Complaint and the Indictment allege that Defendant, as the owner and controlling person of Green Tree, fraudulently solicited investors through telephone solicitations, email, and false statements on a website.⁸⁵ Both documents allege that Defendant, to induce customers to invest with Green Tree, knowingly misrepresented Green Tree's size and past track record, what Green Tree did with customer funds, and how Green Tree was compensated.⁸⁶ Both documents allege that Defendant induced more than fifty customers to deposit more than \$4.6 million with Green Tree

35 (2d Cir. 1978) (“[A] criminal conviction, whether by jury verdict or guilty plea, constitutes estoppel in favor of the United States in a subsequent civil proceeding as to those matters determined by the judgment in the criminal case.” (citations omitted)).

⁸³ NLRB v. Thalbo Corp., 171 F.3d 102, 109 (2d Cir. 1999).

⁸⁴ See id.

⁸⁵ See Compl. ¶¶ 2, 32, 42 [#1]; Pl.'s Mem. Law Supp. Its Mot. Summ. J. Def. Parrilla, Ex. A, Ex. 3, ¶ 11 [#40-1] [hereinafter Indictment].

⁸⁶ See Compl. ¶¶ 3, 23–34 [#1]; Indictment ¶¶ 1–3 [#40-1].

and that Defendant spent most of the funds on business and personal expenses.⁸⁷ Additionally, both documents allege that Green Tree sent customers false account statements misrepresenting customer balances in their trading accounts.⁸⁸

Further, these issues were litigated and decided in the criminal proceeding against Defendant and there was a full and fair opportunity to litigate in the prior proceeding.⁸⁹ Defendant pleaded guilty to all counts in the Indictment, and Judge O'Toole sentenced Defendant.⁹⁰ Defendant was represented by competent defense counsel throughout the criminal proceeding—the same counsel, in fact, that represents Defendant in this proceeding. In the criminal case, Defendant had the benefit of challenging the government's heightened burden of proof and other due process protections available in a criminal case.

For these reasons, Plaintiff's allegations in this action and the charges in the Indictment in the criminal action against Defendant establish the same pattern of illegal conduct. On the basis of collateral estoppel, Defendant is barred from re-litigating issues already resolved against him.

In fact, Defendant does not object to Plaintiff's request for permanent injunctive relief.⁹¹ Defendant opposes only Plaintiff's request for the imposition of money fines.⁹² In support of this argument, Defendant contends that such an imposition of money fines would subject Defendant to

⁸⁷ See Compl. ¶¶ 52–57 [#1]; Indictment ¶ 25 [#40-1].

⁸⁸ See Compl. ¶¶ 37–47 [#1]; Indictment ¶ 14 [#40-1].

⁸⁹ See Thalbo, 171 F.3d at 109.

⁹⁰ Facts ¶¶ 6, 7 [#39].

⁹¹ See Opp'n, 4 [#41].

⁹² See Opp'n, 1–4 [#41].

a second criminal punishment in violation of the Double Jeopardy Clause of the Fifth Amendment and the Excessive Fines Clause of the Eighth Amendment of the U.S. Constitution.⁹³

The Double Jeopardy Clause, however, “protects only against the imposition of multiple *criminal* punishments for the same offense,”⁹⁴ and the current proceeding is, of course, a civil one. The Excessive Fines Clause, meanwhile, applies only to fines paid directly to the government and not to fines or amounts to be paid to investors or others.⁹⁵ Moreover, the Excessive Fines Clause does not apply to restitution or disgorgement.⁹⁶ Here, Plaintiff has made clear that the amount of restitution and disgorgement it seeks would be returned directly to customers Defendant defrauded.⁹⁷ Defendant’s constitutional arguments therefore fail.

⁹³ See Opp’n, 1–4 [#41].

⁹⁴ Hudson v. United States, 522 U.S. 93, 99 (1997) (citations omitted); see also United States v. Kayne, 90 F.3d 7, 11 (1st Cir. 1996) (“A monetary sanction which has no punitive function, i.e., has no purpose other than restitution or compensation for the loss engendered by the defendants’ conduct is not punishment within the ambit of the double jeopardy clause.” (citing United States v. Halper, 490 U.S. 435, 446–49 (1989))); S.E.C. v. Williams, 884 F. Supp. 28, 30–31 (D. Mass. 1995) (Tauro, J.) (“[C]ourts have consistently distinguished disgorgements from penalties . . . [and] rejected the argument that disgorgement implicated double jeopardy concerns.” (citations omitted)).

⁹⁵ See Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc., 492 U.S. 257, 265 (1989) (“[T]he word ‘fine’ was understood to mean a payment to a sovereign as punishment for some offense.”).

⁹⁶ See, e.g., United States v. Newell, 658 F.3d 1, 32 (1st Cir. 2011) (“[The First Circuit has] never held that the Excessive Fines Clause of the Eighth Amendment applies to restitution. The circuits that have considered challenges to restitution orders under the Excessive Fines [C]ause have held that where the restitution order reflects the amount of the victim’s loss no constitutional violation has occurred.” (citations omitted)); S.E.C. v. Blackwell, 477 F. Supp. 2d 891, 916 (S.D. Ohio 2007) (“Defendants’ contention that a disgorgement order would violate the Excessive Fines Clause is similarly disingenuous. Disgorgement is not a fine.”).

⁹⁷ See, e.g., Pl.’s Reply Supp. Its Mot. Summ. J. & Permanent Inj. & Other Equitable Relief Def. Lyndon Lydell Parrilla, 5 [#44].

Plaintiff, in its Complaint, asserted six claims against Defendant: (1) violations of sections 4b(a)(2)(A) and (C) of the Act—fraud by misrepresentation, omission, and misappropriation; (2) violations of Commission Regulations 5.2(b)(1) and (3)—fraud by misrepresentation, omission, and misappropriation; (3) violations of sections 4b(1)(2)(B) of the Act—fraud by making false account statements; (4) violations of Commission Regulation 5.2(b)(2)—fraud by making false account statements; (5) violations of section 4o(1)(A) and (B) of the Act, as amended—fraud by a CTA; and (6) violations of Commission Regulation 5.3(a)(3)(i)—failure to register as a CTA. Given the foregoing reasons, judgment shall issue against Defendant on all of these grounds.

IV. Conclusion

For the foregoing reasons, Plaintiff's Motion for Summary Judgment and for a Permanent Injunction and Other Equitable Relief Against Defendant [#38] is ALLOWED.

AN ORDER HAS ISSUED.

/s/ Joseph L. Tauro
United States District Judge