

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

)	
COMMODITY FUTURES TRADING)	
COMMISSION,)	
)	Case No.
Plaintiff,)	
)	
v.)	COMPLAINT FOR
)	INJUNCTIVE RELIEF,
DAVID WAYNE MAYER, SILVER)	RESTITUTION, CIVIL
STAR FX, LLC d/b/a SILVER STAR)	MONETARY PENALTIES
LIVE, AND SILVER STAR LIVE)	AND OTHER EQUITABLE
SOFTWARE, LLC,)	RELIEF UNDER THE
)	COMMODITY EXCHANGE
Defendants.)	ACT

Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”), by its attorneys, alleges as follows:

I. SUMMARY

1. From at least July 2018 through March 2019 (“Relevant Period”), David Wayne Mayer (“Mayer”) worked as a “Master Trader” for Silver Star Live (“SSL”), and its successor entity, Silver Star Live Software (“SSLS”), two unregistered Commodity Trading Advisors (“CTAs”) that purported to sell a fully-automated retail foreign currency (“forex”) trading software system (“Forex Trading System”). Mayer, the creator of the Forex Trading System sold by SSL,

then SSLs, defrauded members of the public (“Clients”) by fraudulently soliciting them to trade forex through accounts managed by the Forex Trading System.

Mayer, using the pseudonym “Quicksilver,” and acting as an unregistered Associated Person (“AP”), solicited Clients through videos posted online and on social media accounts, as well as at in-person marketing events. The solicitations contained material misrepresentations and omissions, in that they: (1) repeatedly misrepresented Mayer’s qualifications and trading experience; and (2) misrepresented the Forex Trading System’s performance history and expected trading profits based on live trading in Mayer’s own account, and failed to disclose that Mayer never opened a live trading account using the Forex Trading System.

2. Approximately 10,000 Clients purchased access to the Forex Trading System from SSL and/or SSLs; many of these Clients subsequently paid a monthly subscription fee to maintain ongoing access to the Forex Trading System. Some Clients became “Affiliates” of SSL and/or SSLs. These Affiliates marketed the Forex Trading System to additional Clients, and received associated credits and/or referral fees from SSL and/or SSLs. Ultimately, SSL and SSLs received at least \$3 million from Clients during the Relevant Period.

3. Defendants made no attempt to determine whether any of these Clients were eligible contract participants (“ECPs”), and many, if not all, of the SSL and SSLs Clients were not ECPs.

4. Through this fraudulent marketing of and solicitation for the Forex Trading System, Mayer, SSL, and SSLS (collectively, “Defendants”), engaged, are engaging, or are about to engage in acts and practices that violate certain anti-fraud and registration provisions of the Commodity Exchange Act (the “Act”) and Commission Regulations (“Regulations”), including Sections 4b(a)(2)(A) and (C), 4k(3), and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6b(a)(2)(A), (C), 6k(3), 6o(1)(A), (B) (2018), and Regulation 5.2(b)(1) and (3), 17 C.F.R. § 5.2(b)(1), (3) (2019).

5. Mayer also violated CFTC registration provisions, including Section 2(c)(2)(C)(iii)(I)(aa) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) (2018), and Regulations 3.12(a) and 5.3(a)(3)(ii), 17 C.F.R. §§ 3.12(a), 5.3(a)(3)(ii) (2019).

6. The acts, omissions, and failures of Mayer occurred within the scope of his employment, office, or agency with SSL and SSLS; therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2018), and Regulation 1.2, 17 C.F.R. § 1.2 (2019), SSL and SSLS are liable for the acts, omissions, and failures of Mayer that constitute violations of the Act and Regulations.

7. Between October 2018 and March 2019, Mayer was an officer and controlling person of SSLS. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2018), Mayer is liable as a controlling person for the actions of SSLS in violation of the Act and Regulations.

8. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(a) (2018), the Commission brings this action to enjoin Defendants' unlawful acts and practices, to compel compliance with the Act and Regulations, and to further enjoin Defendants from engaging in any commodity-related activity. In addition, the Commission seeks civil monetary penalties, restitution, and ancillary remedial relief, including but not limited to, trading and registration bans, rescission, disgorgement of benefits derived from Defendants' illegal activities, fees and costs, pre-judgment and post-judgment interest, and such other equitable relief as the Court may deem necessary and appropriate.

II. JURISDICTION AND VENUE

9. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (2018) (federal question jurisdiction) and 28 U.S.C. § 1345 (2018) (district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). In addition, Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), provides that United States district courts possess jurisdiction to hear actions brought by the CFTC for injunctive relief or to enforce compliance with the Act whenever it shall appear to the CFTC that such person has engaged, is engaging, or is about engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order promulgated thereunder.

10. Venue properly lies with this Court pursuant to Section 6c of the Act because Defendants are found in, inhabit, or transact business in this District, or the acts and practices in violation of the Act and Regulations occurred, or are occurring, or are about to occur within this District, among other places.

III. PARTIES

A. Plaintiff

11. Plaintiff **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 CFTC maintains its principal office at Three Lafayette Centre, 1155 21st Street N.W., Washington, DC 20581.

B. Defendants

12. **David Wayne Mayer** is an individual currently residing in Roswell, Georgia. During the Relevant Period, Mayer was a resident of Boynton Beach, Florida. He was a “Master Trader” of SSL and acted as both “Master Trader” and a founding Member of SSLs. Mayer was primarily responsible for: (1) creating the Forex Trading System sold by SSL and SSLs, which engaged in discretionary trading on behalf of Clients; and (2) marketing the Forex Trading System on behalf of SSL and SSLs.

13. **Silver Star FX, LLC d/b/a Silver Star Live** was a limited liability company organized and operated pursuant to the laws of the state of New Mexico. SSL has never been registered with the Commission in any capacity.

14. **Silver Star Live Software, LLC** is a limited liability company organized and operated pursuant to the laws of the state of Florida. Mayer's home address in Boynton Beach, Florida, was listed as the corporate and mailing address for SSLS, of which Mayer was a one-third owner. SSLS has never been registered with the Commission in any capacity.

IV. FACTS

A. **Defendants Solicited Clients to Purchase and Trade Using the Forex Trading System**

15. During the Relevant Period, SSL and SSLS marketed, under various names, the Forex Trading System, which SSL and SSLS described as a fully automated "Forex autotrader." The Forex Trading System was designed to trade retail forex offered or entered into on a leveraged or margined basis. By virtue of this Forex Trading System, SSL and SSLS exercised discretionary trading authority over retail Clients' forex accounts.

16. From at least July 2018 to March 2019, on behalf of SSL and later, SSLS, Mayer solicited Clients to open discretionary trading accounts (or supervised other persons who did so) and offered to trade Clients' retail forex accounts through the Forex Trading System. The Forex Trading System was

marketed under multiple different names during the Relevant Period, reflecting Mayer's continual updating of its software. This software purported to trade multiple currency pairs, automatically entering and exiting trades without Client intervention.

17. SSL's website, silverstarlive.com, included the slogan "Our Trades, Your Account." On this website, SSL described its multi-level marketing program, encouraging users to become Affiliates of SSL. A web page explained that as an Affiliate,

[Y]ou can sell directly to your customers using your personal replicated website. When your customer orders from your SSL website, you will receive a 50% commission based on the Customer Volume (CV) of the product. CV is an amazing \$for\$. For example, if your customer purchases the \$199 pkg you will earn \$100 if \$99 you earn \$50. . . . With only 2 customers placing an order for the same service as you or higher . . . you receive a 50% monthly retail bonus making your service FREE[. . .]."

18. In October 2018, Mayer and other SSL officers and employees transitioned to SSLs. The business of SSLs was identical to SSL, in that it sold the Forex Trading System, and implemented a similar multi-level marketing scheme to sell the system. Additionally, SSLs created a new web site, silverstarlivesoftware.com, over which Mayer exercised control.

19. Throughout the Relevant Period, Mayer participated in multiple marketing videos, and at least two in-person presentations, either alone, and/or

with other employees, officers and Affiliates of SSL and SSLs. Mayer was touted in these marketing presentations, and other marketing materials, as a “Master Trader” and the “brain” of the Forex Trading System. The videos featuring Mayer were posted widely on multiple web sites, including silverstarlive.com and silverstarlivesoftware.com, as well as on YouTube, Vimeo, and social media pages maintained by SSL and SSLs. Additionally, Affiliates of SSL and SSLs incorporated portions of the same videos and marketing information in their own internet and social media platforms, as they tried to expand sales to their own Clients.

20. In promotional videos, Mayer himself described the Forex Trading System as being “as close to a ‘set it and forget it’ type of trading system as you can get”; “the average Joe can just leave it alone and just let the software do its thing”; and “you don’t have to have knowledge of trading to do this. Once you set the account up, it runs for you.” Similarly, others at SSL and SSLs described the Forex Trading System as “95% hands-off” after initial set up.

21. Officers, employees, and Affiliates of SSL and SSLs instructed Clients to open retail forex accounts at retail foreign exchange dealers, fund the accounts, and link the accounts to the Forex Trading System. Clients paid an initial purchase price of between \$99 and \$499 to access the Forex Trading System

from their linked account, and a monthly subscription fee of between \$100 and \$200 to maintain access.

22. At times, Mayer also provided trading advice for users who wished to enter manual trades on the Forex Trading System. For example, in approximately October 2018, Mayer began participating in weekly live interactive webinars called “Saturdays with Quicksilver.” The videos were posted to an SSL web site, silverstarlive.com/training. In one such webinar, Mayer provided advice on manual trading, explaining when a user should “sell” and when a user should “buy.” He also offered advice on the amount of leverage that manual users should consider incorporating.

23. Defendants made no attempt to determine whether any of these Clients were ECPs, and many, if not all, of the SSL and/or SSLs Clients were not ECPs.

24. At no time during the Relevant Period was Mayer, SSL, or SSLs registered with the Commission in any capacity or eligible for an exemption from the requirement to register.

B. Defendants Misrepresented Mayer’s Investment Trading Experience When They Solicited Members of the Public to Trade Using the Forex Trading System

25. Throughout the Relevant Period, Mayer highlighted his allegedly extensive trading experience and expertise in SSL and SSLs online videos, in-

person presentations, and other marketing materials. He did so in order to recruit paying Clients to purchase the Forex Trading Systems from SSL and/or SSLs. Mayer rarely, if ever, used his real name in SSL or SSLs marketing materials; instead, he was known by his pseudonym, “Quicksilver”.

26. Mayer made the following specific representations to actual and potential Clients of SSL and SSLs during the Relevant Period:

- Mayer had 20 years of trading experience;
- Mayer had traded for a Wall Street hedge fund;
- During his time at the hedge fund, Mayer was “in charge of trading” for a pension fund for employees of a large municipality, a fund worth “hundreds of millions of dollars;” and
- Mayer “tripled the account every month,” ensuring large investment returns for the client and hedge fund.

27. Officers, employees, and Affiliates of SSL and SSLs, who similarly promoted and marketed the Forex Trading System that Mayer created, repeated Mayer’s representations about his experience in their own online and in-person marketing presentations, throughout the Relevant Period.

28. Defendant's representations about his trading experience, as described in Paragraph 26 of this Complaint, are false.

29. On September 12, 2019, Mayer provided sworn testimony before the CFTC. During his testimony, Mayer admitted that he had no actual trading experience and his statement that he had “been trading for a little over 20 years now” was false.

30. Mayer also admitted in his sworn testimony that his previous statements regarding his experience working at the hedge fund were false. More specifically, Mayer admitted that he never traded any accounts at the hedge fund, including any accounts belonging to a municipal pension fund worth “hundreds of millions of dollars,” and any representations he made about his performance there pertained to so-called “demo accounts” that involved no actual trading. Accordingly, Mayer’s representation that as a result of his efforts, “we’re tripling the account every month,” was also false.

C. Defendants Misrepresented Trading Results When They Solicited Members of the Public to Trade Using the Forex Trading System

31. During the Relevant Period, Mayer also participated in numerous online videos and in-person presentations, in which he purported to show how the Forex Trading System worked. In these presentations, Mayer purported to display the results of trading activity from his “live account,” which evidenced large and immediate returns on his investment. For example, in a video posted publicly in multiple locations including Vimeo, Mayer displayed his computer screen, and stated, “let me shoot you over a shot of my live account . . . this has been running

since yesterday.” Mayer noted that this live account started with \$10,000 and generated a profit of \$1,568.69 in “one day.” Mayer repeated that the trades on the screen were real: “this is my live account right now.”

32. In another marketing video, Mayer purported to display the results of a \$5,000 investment over one month, which similarly demonstrated a profit over a short time period. Mayer stated that when using the Forex Trading System, “you always have a net gain on your account, . . . and thus far, since it has been live, it has not had any losses.” Similarly, Mayer stated in a separate video, “for sixteen years in a row, every month I’ve tripled my account.”

33. In multiple marketing presentations, Mayer alleged that such high returns in these live accounts were possible because his “one-of-a-kind” software used “artificial intelligence” that created “smart trades” of foreign currency pairs. This “smart trading” process minimized trade losses, by quickly trading out of losing trades. Mayer repeatedly stated that, on average, the foreign currency trades made by the Forex Trading System would result in a “win” 90 percent of the time, and would mitigate losses on the remaining 10 percent of its trades. Mayer said, we “win 80 percent [of trades] on a bad month” and “on good months, it’ll win 90, 92, 93 percent.”

34. Similarly positive performance results were also posted on websites advertising access to an SSLS webinar prominently featuring Mayer:

- The website at markethackingsecrets.com, stated: “Here's how 772 newbies are using this breakthrough technology to get 10 to 30 percent gains every month in a \$5.3 trillion per day market.”
- The website at sslwebinar.com/registration promoted access to an SSLS webinar on November 7, 2018, similarly stated: “Here's How 814 ‘Newbies’ Are Using This Breakthrough Technology To Get 10-30% Gains Every Month In A \$5.3 Trillion Dollar Per Day Market!”

35. Mayer’s representations, as described in Paragraphs 31-34 of this Complaint, are false.

36. Mayer admitted in testimony before the CFTC that he never used the Forex Trading System to trade a live account, using only so-called demo accounts to simulate trading activity. Mayer also admitted in testimony that representations he made regarding the performance of the Forex Trading System were based on the trading performance he observed in these demo accounts.

37. Defendants failed to disclose to actual or potential Clients that Mayer had never traded a live account, and therefore: (1) Mayer had never earned any actual profits; (2) Mayer never achieved 10 to 30 percent gains; and (3) Mayer never “won” 80 to 90 percent of trades.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

**Fraud In Connection with Forex Transactions by Fraudulent Solicitation
Violation of Section 4b(a)(2)(A), (C) of the Act 7 U.S.C. § 6b(a)(2)(A), (C)
(2018), and Regulation 5.2(b)(1), (3), 17 C.F.R. § 5.2(b)(1), (3) (2019)
(All Defendants)**

38. Paragraphs 1 through 37 of this Complaint are re-alleged and incorporated herein by reference.

39. 7 U.S.C. § 6b(a)(2)(A) and (C) makes it unlawful:

[F]or 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; . . . 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 of paragraph (2), with the other person.

40. Section 2(c)(2)(C)(iv) of the Act, 7 U.S.C. § 2(c)(2)(C)(iv) (2018), provides that 7 U.S.C. § 6b(a)(2)(A) and (C) of the Act also applies to forex transactions “as if” they were a contract of sale of a commodity for future delivery.

41. 17 C.F.R. § 5.2(b) makes it unlawful:

[F]or 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.

42. During the Relevant Period, Defendants violated 7 U.S.C. § 6b(a)(2)(A) and (C) and 17 C.F.R. § 5.2(b)(1) and (3), by, among other things:

- a. Misrepresenting Mayer's trading experience, including that: (i) he had 20 years of trading experience; (ii) he had traded for a Wall Street hedge fund; (iii) at the hedge fund he was in charge of trading funds belonging to a municipal pension fund worth hundreds of millions of dollars; and (iv) he tripled the value of this client's account every month; and
- b. Misrepresenting to Clients that statements regarding past performance and potential future profits were based on actual trading in live accounts, and failing to disclose to actual or potential Clients that Mayer had never traded a live account, and therefore: (i) Mayer had never earned any actual profits; (ii) Mayer never achieved 10 to 30 percent gains; and (iii) Mayer never "won" 80 to 90 percent of trades.

43. Defendants committed the acts and practices described above using instrumentalities of interstate commerce, including the use of interstate wires for transfer of funds.

44. Defendants committed the acts and practices described herein willfully, or with reckless disregard for the truth.

45. Each misrepresentation or omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. § 6b(a)(2)(A) and (C) and 17 C.F.R. § 5.2(b)(1) and (3).

46. The foregoing acts, omissions, and failures of Mayer occurred within the scope of his employment, office, or agency with SSL and SSLS; therefore, SSL and SSLS are liable for these acts, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2018), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2019).

47. Mayer directly or indirectly controlled SSLS, and did not act in good faith or knowingly induced, directly or indirectly, SSLS's violations alleged in this Count, and is thus liable for SSLS's violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2018).

.

COUNT II

**Commodity Trading Advisor Fraud
Associated Person of a Commodity Trading Advisor Fraud
Violation of Section 4o(1)(A) and (B) of the Act,
7 U.S.C. § 6o(1)(A), (B) (2018)
(All Defendants)**

48. Paragraphs 1 through 47 of this Complaint are re-alleged and incorporated herein by reference.

49. 7 U.S.C. § 6o(1) (2018) provides that:

It shall be unlawful for a commodity trading advisor, [or] associated person of a commodity trading advisor . . . 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.

50. 7 U.S.C. § 6o(1)(A) and (B) applies to CTAs engaging in retail forex transactions pursuant to Sections 2(c)(2)(C)(ii) and (vii) of the Act, 7 U. S. C. §§ 2(c)(2)(C)(ii), (vii) (2018).

51. 7 U.S.C. § 6o(1)(A) and (B) applies to all CTAs, whether registered, required to be registered, or exempted from registration.

52. Section 1a(12) of the Act, 7 U.S.C. § 1a(12) (2018), defines a CTA as any person who for compensation or profit, engages in the business of advising

others as to the value or advisability of trading in, among other things, futures contracts or retail forex transactions. Similarly, Regulation 5.1(e)(1), 17 C.F.R. § 5.1(e)(1) (2019), further defines a CTA as “any person who exercises discretionary trading authority over any account for or on behalf of any person that is not an [ECP] . . . in connection with retail forex transactions.

53. Regulation 1.3, 17 C.F.R. § 1.3 (2019), defines an AP of a CTA as any natural person who is associated with:

A commodity trading advisor as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves: (i) The solicitation of a client's or prospective client's discretionary account, or (ii) the supervision of any person or persons so engaged[.]

54. In the case of an individual, Section 1a(18)(A)(xi) of the Act, 7 U.S.C. §1a(18)(A)(xi) (2018), defines an ECP to mean a person “acting for its own account . . . 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 order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.”

55. During the Relevant Period, SSL and SSLs acted as CTAs by, for compensation or profit, engaging in the business of advising others, soliciting

clients and prospective clients, and by exercising discretionary trading authority over accounts for or on behalf of persons, including persons who are not ECPs, in connection with retail forex transactions.

56. During the Relevant Period, Mayer acted as an AP of a CTA when he solicited clients or prospective clients for discretionary accounts or supervised others engaged in such conduct.

57. During the Relevant Period, Defendants fraudulently marketed and sold access to the Forex Trading System using the mails and other means or instrumentalities of interstate commerce, including internet websites at silverstarlive.com, silverstarlivesoftware.com, markethackingsecrets.com, sslwebinar.com, YouTube, Vimeo, and social media pages, in the name of SSL and/or SSLS.

58. Mayer, acting as an AP of a CTA, and SSL and SSLS, each acting as a CTA, violated 7 U.S.C. § 60(l)(A) and (B) by employing a device, scheme, or artifice to defraud customers and/or engaged or are engaging in transactions, practices, or a course of business which operated as a fraud or deceit upon customers, by, among other things:

- a. Misrepresenting Mayer's trading experience, including that: (i) he had 20 years of trading experience; (ii) he had traded for a Wall Street hedge

fund; (iii) at the hedge fund he was in charge of trading funds belonging to a municipal pension fund worth hundreds of millions of dollars; and (iv) he tripled the value of this client's account every month; and

- b. Misrepresenting to Clients that statements regarding past performance and potential future profits were based on actual trading in live accounts, and failing to disclose to actual or potential Clients that Mayer had never traded a live account, and therefore: (i) Mayer had never earned any actual profits; (ii) Mayer never achieved 10 to 30 percent gains; and (iii) Mayer never "won" 80 to 90 percent of trades.

59. Defendants committed the acts and practices described herein willfully, or with reckless disregard for the truth.

60. Each material misrepresentation or omission of material fact made by Defendants, including but not limited to those specifically alleged herein, constitutes a separate and distinct violation of 7 U.S.C. § 6o(1)(A) and (B).

61. The foregoing acts and omissions of Mayer occurred within the scope of his employment, office, or agency with SSL and SSLs; therefore, SSL and

SSLS are liable for these acts, omissions, and failures pursuant to 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2 (2019).

62. Mayer directly or indirectly controlled SSLS, and did not act in good faith, or knowingly induced, directly or indirectly, SSLS's violations alleged in this Count, and is thus liable for SSLS's violations pursuant to 7 U.S.C. § 13c(b).

COUNT III

Failure to Register Violation of Section 4k(3) of the Act, 7 U.S.C. §6k(3) (2018) (All Defendants)

63. Paragraphs 1 through 62 of this Complaint are re-alleged and incorporated herein by reference.

64. 7 U.S.C. § 6k(3) prohibits persons from being associated with a CTA as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions) in any capacity which involves: (i) the solicitation of a client's or prospective client's discretionary account; or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission.

65. 7 U.S.C. § 6k(3) also prohibits a CTA from permitting a person associated with it to become or remain associated with it, in any such capacity, if the CTA knew or should have known that such person was not registered as an AP.

66. During the Relevant Period, Mayer acted as an unregistered AP, and SSL and SSLs permitted Mayer to become or remain associated with them knowing that Mayer should have been registered as an AP, in violation of 7 U.S.C. § 6k(3).

COUNT IV

Failure to Register
Violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, 7 U.S.C. §
2(c)(2)(C)(iii)(I)(aa) (2018)
and
Regulations 3.12(a) and 5.3(a)(3)(ii), 17 C.F.R. §§ 3.12(a), 5.3(a)(3)(ii) (2019)
(Mayer Only)

67. Paragraphs 1 through 66 of this Complaint are re-alleged and incorporated herein by reference.

68. 7 U.S.C. 2(c)(2)(C)(iii)(I)(aa) states in relevant part that “[a] person, unless registered in such capacity as the Commission by rule, regulation, or order shall determine . . . shall not:

(aa) solicit or accept orders from any person that is not an [ECP] in connection with [retail forex transactions] entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee), or (ff) of subparagraph (B)(i)(II);”

69. Mayer solicited Clients and prospective Clients through video presentations, live events, websites, and other promotional materials. Clients and prospective Clients, who were not ECPs, were solicited to open discretionary accounts to enter into retail forex transactions.

70. As such, Mayer was required to register as an AP of a CTA. By failing to register, Mayer violated 7 U.S.C. 2(c)(2)(C)(iii)(I)(aa).

71. 17 C.F.R. § 3.12(a) prohibits a person from being associated with a CTA unless the person shall have been registered as an AP of the sponsoring CTA.

72. 17 C.F.R. § 5.3(a)(3)(ii) requires any AP of a CTA as a partner, officer, employee, consultant, or agent, who is engaged in retail forex transactions in any capacity which involves: (i) the solicitation of a client's or prospective client's discretionary account; or (ii) the supervision of any person or persons so engaged, to register with the Commission as an AP of a CTA.

73. Mayer was associated with SSL and SSLs, both CTAs, as a partner, officer, employee, consultant, and/or agent, in a capacity which involved the solicitation of a client's or prospective client's discretionary account. Mayer, through video presentations, live events, websites, and other promotional materials solicited non-ECPs to enter into retail forex transactions. As such, Mayer was required to register with the Commission as an AP of a CTA. By failing to register with the Commission as an AP of a CTA, Mayer violated 17 C.F.R. §§ 3.12 and 5.3(a)(3)(ii).

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 (2018), and pursuant to its own equitable powers, enter:

A. An order finding that Defendants violated Sections 4b(a)(2)(A) and (C), 4k(3), and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6b(a)(2)(A), (C), 6k(3), 6o(1)(A), (B) (2018), and Regulation 5.2(b)(1) and (3), 17 C.F.R. § 5.2(b)(1), (3) (2019), and that Mayer also violated Section 2(c)(2)(C)(iii)(I)(aa) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) (2018), and Regulations 3.12 and 5.3(a)(3)(ii), 17 C.F.R. §§ 3.12, 5.3(a)(3)(ii) (2019).

B. An order of permanent injunction permanently restraining, enjoining, and prohibiting Defendants, and any other person or entity associated with them, from engaging in conduct in violation of 7 U.S.C. §§ 6b(a)(2)(A) and (C), 6k(3), and 6o(1)(A) and (B), and 17 C.F.R. § 5.2(b)(1) and (3), and also prohibiting Mayer from engaging in conduct in violation of 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) and 17 C.F.R. §§ 3.12, 5.3(a)(3)(ii).

C. An order of permanent injunction prohibiting Defendants, and any other person or entity associated with them, from directly or indirectly:

- (i) Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2018));
- (ii) Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2019)), for their own personal account or for any account in which they have a direct or indirect interest;
- (iii) Having any commodity interests traded on their behalf;
- (iv) 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;
- (v) Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- (vi) 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 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2019); and

- (vii) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2019)), agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9).

D. An order requiring that Defendants, as well as any successors, disgorge to any officer appointed or directed by the Court all benefits received from the 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, and post-judgment interest;

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

F. An order directing Defendants, as well as any successors, to rescind, pursuant to such procedure as the Court may order, all contracts and agreements,

whether implied or express, entered into between them and any of the customers whose funds were received by them as a result of the acts and practices which constitute violations of the Act and Regulations, as described herein;

G. An order directing Defendants to pay a civil monetary penalty for each violation of the Act and Regulations of not more than the amount set forth by Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1) (2018), as adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, 129 Stat. 584 (2015), title VII, Section 701, and promulgated in Commission Regulation 143.8, 17 C.F.R. § 143.8 (2019), plus post-judgment interest;

H. An order requiring Defendants, as well as any successors, to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2018); and

I. An order providing such other and further relief as the Court may deem necessary and appropriate under the circumstances.

<p>Dated: June 11, 2020</p> <p><u>/s/ Lori M. Beranek</u> Lori M. Beranek Georgia Bar No. 053775 Assistant U.S. Attorney Richard B. Russell Building 75 Ted Turner Dr. SW Atlanta, GA 30303-3309 Tel: 404.581.6000 Fax:404.581.6181</p> <p>Local Counsel for Plaintiff</p>	<p>Respectfully submitted,</p> <p><u>/s/ Aimée Latimer-Zayets</u> Aimée Latimer-Zayets DC Bar No. 476693 (<i>pro hac vice</i> admission pending) James A. Garcia DC Bar No. 458085 (<i>pro hac vice</i> admission pending)</p> <p>Commodity Futures Trading Commission Division of Enforcement 1155 21st Street, NW Washington, DC 20581 Tel: 202.418.7626 (Latimer-Zayets) Tel: 202.418.5362 (Garcia) Fax: 202.418.5937</p> <p>Counsel for Plaintiff</p>
--	--

CERTIFICATION OF COMPLIANCE

Plaintiff certifies that the foregoing Complaint for Injunctive Relief, Restitution, Civil Monetary Penalties and Other Equitable Relief Under the Commodity Exchange Act was prepared using Times New Roman (14) point, as required by N.D. Ga. LR 5.1(C).

/s/ Lori M. Beranek
Lori M. Beranek
Local Counsel for Plaintiff
Commodity Futures Trading Commission