

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

DAVID WAYNE MAYER, SILVER
STAR FX, LLC D/B/A SILVER
STAR LIVE, AND SILVER STAR
LIVE SOFTWARE, LLC,

Defendants.

CIVIL ACTION NO.
1:20-cv-02476-JPB

Final Default Judgment, Permanent Injunction, Restitution and Order

On June 11, 2020, the Commodity Futures Trading Commission (“Commission” or “CFTC”) filed its Complaint [Doc. 1] in the above-captioned action against David Wayne Mayer (“Mayer”), Silver Star Live FX d/b/a Silver Star Live (“SSL”) and Silver Star Live Software LLC (“SSLS”) (collectively “Defendants”) seeking injunctive and other equitable relief for violations of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 1-26, and Commission Regulations (“Regulations”), 17 C.F.R. §§ 1-190.

I. INTRODUCTION

The Complaint alleges that from at least July 2018 through March 2019 (“Relevant Period”), Mayer worked as a “Master Trader” for SSL and its successor entity, SSLs. Both SSL and SSLs were 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 and 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.

As further alleged, 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. 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.

According to the Complaint, through this fraudulent marketing of and solicitation for the Forex Trading System, Mayer, SSL and SSLs 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 and Commission Regulations, including 7 U.S.C. §§ 6b(a)(2)(A), (C), 6k(3), 6o(1)(A), (B) and 17 C.F.R. § 5.2(b)(1), (3). Mayer also violated CFTC registration provisions, including 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) and 17 C.F.R. §§ 3.12(a), 5.3(a)(3)(ii).

The Complaint also alleges that Mayer is liable as a control person for SSLs’s violations of the Act and Regulations pursuant to 7 U.S.C. § 13c(b) and that SSLs is liable as principal for Defendants’ violations because Mayer’s violations of the Act and Regulations occurred within the course and scope of his employment, agency or office pursuant to 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2.

The Complaint seeks to enjoin Defendants' alleged unlawful acts and practices, to compel their compliance with the Act and Regulations and to enjoin them from engaging in any commodity or forex-related activities. In addition, the Complaint seeks civil monetary penalties, restitution and remedial ancillary relief.

II. PROCEDURAL HISTORY

The Commission filed its Complaint on June 11, 2020. [Doc. 1]. It transmitted copies of the Complaint and the summonses to counsel for SSL and SSLS, along with requests for waivers of service, on June 12, 2020. [Docs. 3, 4]. CFTC served Mayer with the Complaint and summons on June 18, 2020. [Doc. 9]. Through counsel, SSL and SSLS waived service on June 29, 2020. [Docs. 12, 13].

Because Defendants have not filed an answer or otherwise responded to the Complaint, the Commission applied for entries of default on August 31, 2020. [Doc. 17]. The Clerk entered default as to all Defendants. The Commission has now submitted its Motion for Entry of Default Judgment, Permanent Injunction, Restitution, Civil Monetary Penalties and Ancillary Equitable Relief Against Defendants ("Motion") pursuant to Fed. R. Civ. P. 55(b)(2), as well as a supporting Memorandum of Law with an attached declaration and exhibits ("Memorandum"). [Docs. 21, 22].

The Court has carefully considered the Complaint, the allegations of which are well-pleaded and hereby taken as true, the Motion and the Memorandum.

Being fully advised in the premises, the Court hereby:

GRANTS the Commission's Motion and enters the following Findings of Fact and Conclusions of Law finding Defendants liable as to all violations as alleged in the Complaint. Accordingly, the Court now issues the following Order which determines that Defendants violated 7 U.S.C. §§ 6b(a)(2)(A), 6b(a)(2)(C), 6k(3), 6o(1)(A), 6o(1)(B) and 17 C.F.R. § 5.2(b)(1), (3), that Mayer violated 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) and 17 C.F.R. §§ 3.12(a), 5.3(a)(3)(ii), and imposes on Defendants a permanent injunction, an order to pay restitution and civil monetary penalties.

III. FINDINGS OF FACT

A. The Parties

1. 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.

2. Defendant 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 a "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.

3. Defendant Silver Star FX, LLC d/b/a Silver Star Live is 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.

4. Defendant 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.

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

5. During the Relevant Period, SSL and SSLS marketed the Forex Trading System under various names and described it 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.

6. 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.

7. 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

8. 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 website, silverstarlivesoftware.com, over which Mayer exercised control.

9. 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 websites, 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.

10. In promotional videos, Mayer made the following statements describing the Forex Trading System: it is “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.

11. 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.

12. During the Relevant Period, Client funds totaling \$198,143.03 were deposited into SSL bank accounts, while client funds totaling \$3,712,035.93 were deposited into an SSLS bank account. In addition, during the Relevant Period, Mayer transferred a total of \$446,000 derived from the business of SSLS to Quicksilver Trading. During the Relevant Period, SSL and SSLS had more than 9,000 Clients.

13. 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 website, 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.

14. 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.

15. 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.

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

16. 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.”

17. 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.

18. 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.

19. Mayer's representations about his trading experience, as described in Finding 17 above were false.

20. 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.

21. 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.

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

22. 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, saying “this is my live account right now.”

23. 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.”

24. 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” ninety percent of the time and would mitigate losses on the remaining ten 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.”

25. 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, and 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!”

26. Mayer's representations, as described in Findings 22-25 above, were false.

27. 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.

28. 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 ten to thirty percent gains; and (3) Mayer never "won" eighty to ninety percent of trades.

IV. CONCLUSIONS OF LAW

A. Defendants' Failure to Properly Answer Warrants Entry of Default Judgment

Entry of default judgment is committed to the discretion of the district court. Hamm v. DeKalb Cnty., 774 F.2d 1567, 1576 (11th Cir. 1985). While a defaulting party is deemed to have admitted all well-pleaded factual allegations, a court must investigate the legal sufficiency of the allegations and ensure that the complaint states a plausible claim for relief. Cotton v. Mass. Mut. Life Ins. Co., 402 F.3d 1267, 1278 (11th Cir. 2005).

After the Court determines that a default judgment should be entered, "it

then determines the amount and character of the recovery that should be awarded.”

Pitts ex. rel. Pitts v. Seneca Sports, Inc., 321 F. Supp. 2d 1353, 1356 (S.D. Ga.

2004) (citing Patray v. Nw. Publ’g, Inc., 931 F. Supp. 865, 868 (S.D. Ga. 1996)).

While plaintiff must establish that the amount of damages requested is reasonable under the circumstances, the Court can “take evidence when necessary, or compute them from the facts of record.” Id.

The well-pleaded facts of the Complaint establish Defendants’ liability, and the evidence submitted by the Commission with the Complaint establish the appropriate amount of damages to be awarded.

B. Jurisdiction and Venue

This Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1345 (jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). 7 U.S.C. §§ 2(c)(2)(C), 13a-1(a) authorize the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging or is about to engage in any act or practice that violates any provision of the Act or any rule, regulation or order promulgated thereunder.

Venue properly lies with the Court pursuant to 7 U.S.C. § 13a-1(e) because Defendants resided in this District, Defendants transacted business in this District and the acts and practices in violation of the Act occurred within this District.

C. The Defendants Violated 7 U.S.C. § 6b(a)(2)(A), (C) and 17 C.F.R. § 5.2(b)(1), (3).

7 U.S.C. § 6b(a)(2)(A), (C) prohibits any person or entity from cheating or defrauding another person in connection with commodity futures or swaps. 7 U.S.C. § 6b applies to off-exchange leveraged or margined forex transactions that are entered into with non-eligible contract participants and do not result in actual delivery within two days, as if they were futures contracts. 7 U.S.C. § 2(c)(2)(C)(iv).

17 C.F.R. § 5.2(b)(1)-(3) makes it unlawful for any person to cheat or defraud or attempt to cheat or defraud another person by use of the mails or by any means or instrumentality of interstate commerce, or willfully to deceive or attempt to deceive another person by any means whatsoever in connection with any forex transaction.

To establish liability under 7 U.S.C. § 6b(a), the Commission must prove that: (1) a misrepresentation, false or misleading statement or deceptive omission was made; (2) with scienter; and (3) the misrepresentation, false or misleading statement or deceptive omission was material. Commodity Futures Trading Comm'n v. R.J. Fitzgerald & Co., 310 F.3d 1321, 1328 (11th Cir. 2002).

1. Defendants Made Misrepresentations and Omissions

Defendants falsely represented to Clients, on their websites and in social media, that: (1) Mayer had 20 years of trading experience; (2) he had traded for a

Wall Street hedge fund; (3) at the hedge fund, he was in charge of trading funds belonging to a municipal pension fund worth hundreds of millions of dollars; and (4) his statements regarding past performance and potential future profits were based on actual trading in live accounts. All of these statements are false. Further, 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 ten to thirty percent gains; and (3) Mayer never “won” eighty to ninety percent of trades. These omissions were deceptive.

2. Defendants Acted with Scienter

Defendants acted with the requisite scienter to violate 7 U.S.C. § 6b(a)(2). Scienter requires proof that a defendant committed the alleged wrongful acts intentionally or with reckless disregard for the truth. See Commodity Futures Trading Comm’n v. Noble Metals Int’l, 67 F.3d 766, 774 (9th Cir. 1995) (holding that scienter is established when defendants act intentionally or with “careless disregard”). The Commission can establish scienter by showing that a defendant “knew the representations were false and were calculated to cause harm or by showing that the representations were made with a reckless disregard for their truth or falsity.” Commodity Futures Trading Comm’n v. Nat’l Inv. Consultants, Inc., No. C 05-02641, 2005 WL 2072105, at *8 (N.D. Cal. Aug. 26, 2005) (citing Commodity Futures Trading Comm’n v. Noble Wealth Data Info. Servs., Inc., 90

F. Supp. 2d 676, 686 (D. Md. 2000)). To prove that conduct is intentional, the Commission must demonstrate that it is “intentional as opposed to accidental.” Lawrence v. Commodity Futures Trading Comm’n, 759 F.2d 767, 773 (9th Cir. 1985).

Here, Mayer knew he possessed neither the trading experience nor the expertise he represented to Clients. Significantly, Mayer admitted to making many of these misrepresentations in sworn testimony before Commission staff.

Accordingly, these representations lack an adequate basis in fact and are at best reckless. Commodity Futures Trading Comm’n v. Heffernan, 245 F. Supp. 2d 1276, 1294 (S.D. Ga. 2003) (addressing claim that it was “possible to earn \$500 per day” using a trading system was based on speculation, not actual results, and therefore was fraudulent). Therefore, the Court finds that Defendants acted with scienter.

3. Defendants’ Misrepresentations and Omissions were Material

Whether a misrepresentation or omission has been made is determined objectively, through examination of the “overall message” and the “common understanding of the information conveyed.” R.J. Fitzgerald, 310 F.3d at 1329. A statement or omission is material if “a reasonable investor would consider it important in deciding whether to make an investment.” Id. at 1328-29.

“Misrepresentations concerning profit and risk go to the heart of a customer’s

investment decision and are therefore material as a matter of law.” Noble Wealth Data Info. Servs., Inc., 90 F. Supp. 2d at 686 (citing Commodity Futures Trading Comm’n v. Commonwealth Fin. Grp., 874 F. Supp. 1345, 1353 (S.D. Fla. 1994)).

Defendants’ misrepresentations go to the very heart of a Client’s decision whether to invest. Because there is a substantial likelihood that a reasonable investor would consider Defendants’ misrepresentations about Mayer’s background, trading acumen and trading success important in making an investment decision, Defendants made material misrepresentations.

D. Defendants Violated 7 U.S.C. § 6o(1)(A), (B)

7 U.S.C. § 6o(1)(A), (B) makes it unlawful for a CTA to use any means or instrumentality of interstate commerce to (A) employ any device, scheme or artifice to defraud a client or prospective client; or (B) engage in a transaction, practice or course of business that operates as a fraud or deceit upon a client or prospective client. 7 U.S.C. § 6o(1)(A), (B) applies to CTAs engaging in retail forex transactions pursuant to 7 U.S.C. § 2(c)(2)(C)(ii), (vii).

7 U.S.C. § 1a(12) 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, 17 C.F.R. § 5.1(e)(1) further defines a CTA as “any person who exercises discretionary trading authority or obtains written authorization to

exercise discretionary trading authority over any account for or on behalf of any person that is not an [ECP] in connection with retail forex transactions.”

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

Defendants’ material misrepresentations and omissions in violation of 7 U.S.C. § 6b(a)(2)(A)-(C) also establish liability for fraud under 7 U.S.C. § 6o(1)(A), (B). See Commodity Futures Trading Comm’n v. Aurifex Commodities Research Co., No. 1:06–CV–166, 2008 WL 299002, at *5-6 (W.D. Mich. Feb. 1, 2008).

E. Defendants Violated 7 U.S.C. § 6k(3)

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.

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 Associated Person.

During the Relevant Period, Mayer acted as an unregistered AP. 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).

F. Mayer Violated Section 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) and 17 C.F.R. §§ 3.12(a) and 5.3(a)(3)(ii)

7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) prohibits any person, unless registered with the Commission, from soliciting or accepting orders from any person who is not an ECP in connection with retail forex transactions. 17 C.F.R. § 3.12(a) prohibits a person from being associated with a CTA, unless the person is registered as an AP of the CTA. 17 C.F.R. § 5.3(a)(3)(ii) states that, in connection with retail forex transactions, any natural person must register with the Commission as an AP of a CTA if they are associated with a CTA 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 so engaged.

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 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) and 17 C.F.R. §§ 3.12(a), 5.3(a)(3)(ii).

G. Principal Agent Liability

7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2 provide that a principal may be liable for its agent's violations of the Act and Regulations. Liability under 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2 requires consent to the agency by both principal and agent, and the control of the agent by the principal. Commodity Futures Trading Comm'n v. Gibraltar, 575 F.3d 1180, 1188-89 (11th Cir. 2009). Both requirements are met here.

Mayer engaged in the conduct described herein within the course and scope of his employment with both SSL and SSLS. Mayer acted as a "Master Trader" for SSL, and as both a "Master Trader" and a Co-owner of SSLS. The facts alleged in the Complaint occurred within the scope of his employment with SSL and SSLS. Accordingly, Mayer, SSL and SSLS consented to the agency

relationship, and both SSL and SSLS controlled Mayer's conduct. Therefore, SSL and SSLS are liable for the acts, omissions and failures of Mayer in violation of 7 U.S.C. §§ 6b, 4o.

H. Control Person Liability

7 U.S.C. § 13c(b) provides that "any person who, directly or indirectly, controls any person who has violated any provision" of the Act or Regulations "may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person" where the controlling person "did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation."

To demonstrate control person liability, the Commission must prove that the control person had actual or constructive knowledge of the core activities that made up the violation at issue and allowed them to continue. R.J. Fitzgerald, 310 F.3d at 1334 (citing JCC, Inc. v. Commodity Futures Trading Comm'n, 63 F.3d 1557, 1568 (11th Cir. 1995)).

Evidence that a defendant is an officer, founder, principal or the authorized signatory on the company's bank accounts indicates the power to control a company. In re Spiegel, CFTC No. 85-19, 1988 WL 232212, at *8 (Jan. 12, 1988). The Commission must also show that a defendant possessed specific control, which is "the power or ability to control the specific transaction or activity upon

which the primary violation was predicated.” Monieson v. Commodity Futures Trading Comm’n, 996 F.2d 852, 860 (7th Cir. 1993) (internal quotation marks and citation omitted).

As found above, Mayer was a “Master Trader” and Co-owner of SSLS. Mayer created the SSLS entity using his home address as the official address for SSLS. Mayer created the SSLS website and was responsible for the site’s contents. Additionally, Mayer was responsible for creating and marketing the Forex Trading System sold by SSLS. He was also a signatory on SSLS’s bank accounts. Therefore, Mayer possessed both general control over the operation of SSLS and specific control over the actions of SSLS that are alleged in the Complaint. As such, pursuant to 7 U.S.C. § 13c(b) of the Act, Mayer is liable for SSLS’s violations as a control person.

V. REMEDIES

A. Permanent Injunction

Based upon and in connection with the conduct described above, pursuant to 7 U.S.C. § 13a-1, Defendants are permanently restrained, enjoined and prohibited from directly or indirectly:

1. Cheating or defrauding, or attempting to cheat or defraud, other persons; issuing or causing to be issued false reports; and willfully deceiving or attempting to deceive other person in or in connection with any order to make, or

the making of, any contract of sale of any commodity for future delivery, or forex contract that is made, or to be made, for or on behalf of, or with, any other person in violation of 7 U.S.C. § 6b(a)(2)(A), (C) and 17 C.F.R. § 5.2(b)(1), (3);

2. Using the mails or other means or instrumentalities of interstate commerce to directly or indirectly employ a device, scheme or artifice to defraud clients or prospective clients, or engage in transactions, practices or courses of business which operate as a fraud or deceit upon clients or prospective clients in violation of 7 U.S.C. § 6o(1)(A), (B);

3. 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 registered with the Commission, in violation of 7 U.S.C. § 6k(3); or, while acting as a CTA, permitting a person not registered as an AP to associate with the CTA;

4. Trading on or subject to the rules of any registered entity (as that term is defined in 7 U.S.C. § 1a(40));

5. Entering into any transactions involving "commodity interests" (as that term is defined in 17 C.F.R. § 1.3) for Defendant's own personal accounts or for any account in which they have a direct or indirect interest;

6. Having any commodity interests traded on their behalf;
7. 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;
8. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
9. 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 17 C.F.R. § 4.14(a)(9); and/or
10. Acting as a principal (as that term is defined in 17 C.F.R. § 3.1(a)), agent or any other officer or employee of any person registered, or exempted from registration, or required to be registered with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9).

Based upon and in connection with the conduct described above, pursuant to 7 U.S.C. § 13a-1, Mayer is further permanently restrained, enjoined and prohibited from directly or indirectly:

11. Soliciting or accepting orders from any person who is not an ECP in connection with retail forex transactions without being registered with the Commission, in violation of 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa);

12. Being associated with a CTA unless registered with the Commission as an AP, in violation of 17 C.F.R. § 3.12(a); and

13. In connection with retail forex transactions, being associated with a CTA as a partner, officer, employee, consultant or agent and acting 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 person so engaged, in violation of 17 C.F.R. § 5.3(a)(3)(ii).

B. Restitution

7 U.S.C. § 13a-1(d)(3)(A) authorizes the CFTC to seek, and the Court to impose, equitable remedies for violations of the Act, including “restitution to persons who have sustained losses proximately caused by such violation (in the amount of such losses).” Restitution exists to “restore the status quo” and reflects “the difference between what defendants obtained and the amount customers received back” Commodity Futures Trading Comm’n v. Driver, 877 F. Supp. 2d 968, 981 (C.D. Cal. 2012) (entering default judgment and ordering restitution equal to the amount of money solicited minus the amount returned to customers).

Where, as here, controlling person liability is established, imposition of joint and several liability is appropriate. See Commodity Futures Trading Comm’n v. Hunter Wise Commodities, LLC, 21 F. Supp. 3d 1317, 1350-53 (S.D. Fla. 2014) (imposing joint and several liability and damages against both controlling persons

and corporate entity). Likewise, where principal-agent liability is established, imposition of joint and several liability is appropriate. See Commodity Futures Trading Comm'n v. Gutterman, No. 12–21047–CIV, 2012 WL 2413082, at *9-11 (S.D. Fla. June 26, 2012) (default judgment entered finding individual and corporate defendants jointly and severally liable where principal-agent liability under Section 2(a)(1)(b) applies).

Bank records for both SSL and SSLS establish that Defendants' conduct caused clients to incur losses totaling \$3,910,178.96, which reflects the total funds Defendants fraudulently solicited for the purchase and licensing of the Forex Trading System.

Defendants shall pay restitution in the following amounts ("Restitution Obligations"): (i) SSL in the amount of \$198,143.03; and (ii) SSLS, jointly and severally with Mayer as a control person of SSLS, in the amount of \$3,712,035.93.

If the Restitution Obligations are not paid immediately, post-judgment interest shall accrue on the Restitution Obligations beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

To effect payment of the Restitution Obligations and the distribution of any restitution payments to Defendants' clients, the Court appoints the National Futures Association ("NFA") as Monitor ("Monitor"). The Monitor shall receive

restitution payments from Defendants and make distributions as set forth below.

Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from the NFA's appointment as Monitor, other than actions involving fraud.

Defendants shall make Restitution Obligation payments, and any post-judgment interest payments, under this Order to the Monitor in the name "Mayer / Silver Star Live FX LLC / Silver Star Live Software LLC –Settlement/Restitution Fund" and shall send such payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies the paying Defendant(s) and the name and docket number of this proceeding. The paying Defendant(s) shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

The Monitor shall oversee the Restitution Obligations and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendants' clients identified by the CFTC or may defer distribution until such time as the Monitor deems appropriate.

Defendants shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendants' clients to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Defendants shall execute any documents necessary to release funds that they have in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligations.

The Monitor shall provide the CFTC at the beginning of each calendar year with a report detailing the disbursement of funds to Defendants' clients during the previous year. The Monitor shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

The amounts payable to each client shall not limit the ability of any client from proving that a greater amount is owed from Defendants or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any client exist under state or common law.

Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each client of Defendants who suffered a loss is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain

satisfaction of any portion of the restitution that has not been paid by Defendants to ensure continued compliance with any provision of this Order and to hold Defendants in contempt for any violations of any provision of this Order.

To the extent that any funds accrue to the U.S. Treasury for satisfaction of Defendants' Restitution Obligations, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

C. Civil Monetary Penalty

7 U.S.C. § 13a-1 and 17 C.F.R. § 143.8 permit the Court to impose civil penalties ("CMP") for violations of the Act or Regulations in the amount of not more than the greater of \$182,031 or triple the monetary gain to the person for each violation.

Conduct that violates the core provisions of the Act should be considered extremely serious. JCC, Inc. v. Commodity Futures Trading Comm'n, 63 F.3d 1557, 1571 (11th Cir. 1995). Severe sanctions are particularly warranted when a defendant repeatedly violates the Act, and the Commission may, as it did in this case, allege multiple violations in a single count. See In re Slusser, CFTC Docket No. 94-14, 1999 WL 507574, at *18 (July 19, 1999); Commodity Futures Trading Comm'n v. Levy, 541 F.3d 1102, 1112 (11th Cir. 2008). CMPs should "reflect both the abstract or general seriousness of each violation . . . and should be sufficiently high to deter future violations," which means that CMPs should make

it financially detrimental to a defendant to fail to comply with the Act and Regulations. In re Grossfeld, CFTC Docket No. 89-23, 1996 WL 709219, at *12 (Dec. 10, 1996), aff'd, 137 F.3d 1300 (11th Cir. 1998).

Because Defendants committed repeated violations of a core provision of the Act by defrauding more than 9000 clients out of millions of dollars, the Commission asks that the Court order Defendants to pay significant civil monetary penalties (“CMP Obligations”). The CMP Obligations represent the statutory maximum of three times the gain to each Defendant as a result of their violations. The Court concludes that: (1) the gain to SSL is \$198,143.03; (2) the gain to SSLS is \$3,266,035.93 (i.e., total gains to SSLS (\$3,712,035.93) less funds Mayer transferred from SSLS to Quicksilver Trading (\$446,000)); and (3) the gain to Mayer is \$446,000 (i.e., the funds Mayer transferred from SSLS to Quicksilver Trading). Consequently, the Court Orders CMP Obligations in the following amounts: (1) SSL in the amount of \$594,429.09; (2) SSLS in the amount of \$9,798,107.79; and (3) Mayer in the amount of \$1,338,000.

Defendants shall pay the CMP Obligations immediately, and post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961.

Defendants shall pay the CMP Obligations by electronic funds transfer, or

by U.S. Postal money order, certified check, bank cashier's check or bank money order. If payment is to be made other than by electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 181
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Defendants shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Defendants shall accompany payment of the penalty with a cover letter that identifies Defendant and the name and docket number of the proceedings. Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, and the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

VI. MISCELLANEOUS PROVISIONS

Partial Satisfaction: Acceptance by the CFTC or the Monitor of any partial

payment of Defendants' Restitution Obligation and CMP Obligations shall not be deemed a waiver of his obligation to make further payments pursuant to this Order, or a waiver of the CFTC's right to seek to compel payment of any remaining balance.

Cooperation: Defendants shall cooperate fully and expeditiously with the CFTC, including the CFTC's Division of Enforcement, in this action, and in any current or future CFTC investigation or action related thereto. Defendants shall also cooperate in any investigation, civil litigation or administrative matter related to, or arising from, the subject matter of this action.

Equitable Relief: The injunctive and equitable relief provisions of this Order shall be binding upon Defendants and upon any persons who are acting in the capacity of agent, officer, employee, servant, attorney, successor and/or assign of Defendants, and upon any person acting in active concert or participation with Defendants who receives actual notice of this Order by personal service or otherwise.

Notices: All notices required to be given to the Commission by any provision in this Order shall be sent certified mail, return receipt requested, as follows:

Richard A. Glaser
Deputy Director
Commodity Futures Trading Commission
Division of Enforcement

Three Lafayette Centre 1155
21st Street, NW
Washington, DC 20581

Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this case to assure compliance with this Order and for all other purposes related to this action.

SO ORDERED this 27th the day of July, 2021.



J. P. BOULEE
United States District Judge