

3. Steynberg's period to answer or move against the Complaint expired on November 15, 2022.¹

4. Steynberg failed to respond to the Complaint within the time allowed, prompting the CFTC to submit a Motion for Entry of Default Against Steynberg pursuant to Fed. R. Civ. P. 55(a). Mot. for Clerk's Entry of Default Against Defendant Steynberg, ECF No. 14.

5. On November 18, 2022, the Clerk entered default against Steynberg. Clerk's Entry of Default Against Steynberg, ECF No. 15.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

The Parties

6. 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.

7. Defendant **Cornelius Johannes Steynberg** is a citizen of the Republic of South Africa. Steynberg's last known residence is in Stellenbosch, Western Cape South Africa. Upon information and belief, he is a fugitive from South African law enforcement but was detained in the Federative Republic of Brazil on an INTERPOL arrest warrant in or about late-December 2021. Throughout the Relevant Period, Steynberg held himself out as the Shareholder, Director, and CEO of MTI. Steynberg has never been registered with the CFTC in any capacity.

8. Defendant **Mirror Trading International Proprietary Limited** is a company organized and operated pursuant to the laws of the Republic of South Africa, with a principal

¹ Although Fed. R. Civ. P. 12(a)(1)(A)(i) requires a defendant to answer or move against a complaint within 21 days of service, the Court permitted additional time for Defendant Steynberg to answer following service by publication.

place of business in Stellenbosch, Western Cape South Africa. MTI has never been registered with the CFTC in any capacity.

Factual Overview

9. From at least May 18, 2018 through at least March 30, 2021 (the “Relevant Period”), Steynberg, individually and as the controlling person of MTI, engaged in an international fraudulent multilevel marketing (“MLM”) scheme, using the websites *www.mtimembers.com*, *www.mirrortradinginternational.au.za*, and *www.mymticlub.com*, in addition to social media, to solicit Bitcoin from members of the public for participation in a commodity pool operated by MTI (“commodity pool” or “Pool”). Compl. ¶ 1; Decl. of Futures Trading Investigator George H. Malas (“Malas Decl. III”) ¶¶ 8, 15. The Pool purportedly traded off-exchange, retail foreign currency (“forex”) on a leveraged, margined and/or financed basis with participants who were not eligible contract participants (“ECPs”) through a proprietary “bot” or software program. Compl. ¶ 1; Malas Decl. III ¶ 8. During the Relevant Period, Steynberg, individually and as the principal and agent of MTI, accepted at least 29,421 Bitcoin — with a value of not less than \$1,733,838,372 at the end of the Relevant Period — from at least 23,000 U.S. participants (over 1,300 from Texas), and even more throughout the world, without being registered as an associated person (“AP”) of a commodity pool as required by federal law. Compl. ¶¶ 1, 7, 16, 22; Malas Decl. III ¶¶ 7b, 8; Malas Decl. III Ex. 1 at MTI-NFA-7-1 to 7-2, 8-1 to 8-2 (NFA Certs.). At the same time, MTI operated as a commodity pool operator (“CPO”) without being registered as such as required by federal law. Compl. ¶¶ 1, 7, 17; Malas Decl. III ¶ 7a; Malas Decl. III Ex. 1 at NFA-5-1 to 5-2, 6-1 to 6-2 (NFA Certs.). Defendants misappropriated, either directly or indirectly, all of the Bitcoin they accepted from pool participants. Compl. ¶¶ 1, 4, 6, 39-43; Malas Decl. III ¶¶ 8, 23, 25.

10. In early 2021, MTI was the subject of bankruptcy proceedings in the Republic of South Africa. Compl. ¶ 5; Malas Decl. III ¶ 11. By April 2021, the South African Financial Services Conduct Authority (“FSCA”) was working with South African bankruptcy liquidators as MTI had been placed into liquidation.² Compl. ¶ 5; Malas Decl. III ¶ 11. Shortly thereafter, it was learned that FXChoice, Ltd. (“FXChoice”), a broker located in Belize, had frozen Defendants’ Pool account (account No.**4850, referred to hereinafter as “FXChoice Pool account” or “Pool account”), eight months earlier, on or about August 7, 2020, for suspected fraud. Compl. ¶¶ 5, 32-38; Malas Decl. III ¶¶ 11, 39; Malas Decl. III Ex. 3 at MTI-FSCA-36-2, 50-1, 56-3, 71-4, 89-21 (FSCA Docs.). At the time FXChoice froze the Pool account in August 2020, it held only 1,280 Bitcoin, with a value of approximately \$75.4 million at the end of the Relevant Period. Compl. ¶ 5; Malas Decl. III ¶¶ 11, 39, 41d; Malas Decl. III Ex. 3 at MTI-FSCA-36-1, 49-3, 50-1, 89-18 (FSCA Docs.). Of the 29,421 Bitcoin participants sent to Defendants’ electronic wallets (“E-Wallets”) for the MTI pool, Defendants deposited only 1,847 into the Pool account. Compl. ¶¶ 4, 6, 40; Malas Decl. III ¶¶ 12, 24, 41c; Malas Decl. III Ex. 3 at MTI-FSCA-36-1, 46-3, 49-3, 89-18 (FSCA Docs.). Therefore, Defendants failed to deposit 27,574 Bitcoin from participants into the FXChoice Pool account. Compl. ¶¶ 6, 40; Malas Decl. III ¶¶ 12, 14, 24. Defendants’ limited trading in the FXChoice Pool account resulted in overall losses, and Defendants misappropriated the remaining 27,574 Bitcoin sent by participants for trading, including by failing to use all of the funds for trading and by providing Bitcoin to certain participants as sham “profits” and “bonus” payments in the nature of a “Ponzi” scheme. Compl. ¶¶ 6, 39-43; Malas Decl. III ¶¶ 14, 23; Malas Decl. III Ex. 3 at MTI-FSCA-13-3, 36-2, 71-4, 89-

² MTI’s joint liquidators filed for bankruptcy in the U.S. District Court for the Southern District of Florida under Chapter 15 of the U.S. Bankruptcy Code. *See In re Mirror Trading Int’l (PTY) Ltd.*, No. 23-11046-PDR (S.D. Fla. filed Feb. 9, 2023).

3 to 89-4, 89-18, 89-35 (FSCA Docs.). Upon information and belief, Steynberg fled South Africa and was subsequently arrested in the Federative Republic of Brazil for using a false identity and then held on an INTERPOL warrant, where he is currently being detained and awaiting extradition proceedings. Compl. ¶ 16; Malas Decl. III ¶ 7b.

The Fraudulent Scheme

1. The Initial Scheme

11. Steynberg founded MTI in the Republic of South Africa in April 2019. Compl. ¶ 21; Malas Decl. III ¶ 7b. Throughout the Relevant Period, Defendants, by and through Steynberg, accepted at least 29,421 Bitcoin with a value of not less than \$1,733,838,372 at the end of the Relevant Period from at least 23,000 U.S. participants and others throughout the world to participate in the unregistered commodity pool. Compl. ¶ 21; Malas Decl. III ¶¶ 8, 10, 12. Most if not all of these participants were non-ECPs based upon information and belief. Compl. ¶ 21; Malas Decl. III ¶ 16. Defendants, through Steynberg, knowingly and falsely represented to actual and prospective pool participants that Defendants operated a pooled forex account, using an experienced trader to produce consistent, high rates of return. Compl. ¶ 21; Malas Decl. III ¶¶ 13, 29, 32; Malas Decl. III Ex. 3 at MTI-FSCA-89-3, 89-15 (FSCA Docs.), Ex. 5 at MTI-CFTC-WEB-5-1 (MTI Website).

12. Throughout the Relevant Period, Defendants solicited actual and prospective participants through social media such as Facebook, Instagram, and YouTube. Compl. ¶ 22; Malas Decl. III ¶ 15; Malas Decl. III Exs. 5, 7 (MTI Website; MTI Social Media). Defendants also solicited through in-person meetings, word-of-mouth, instant messaging services such as Telegram Messaging App, podcasts, and websites operated by Steynberg, including *www.mirrortradinginternational.au.za*, *www.mtimembers.com*, *www.mymticlub.com*, and

www.mymticlub.com (collectively, the “websites”). Compl. ¶ 22; Malas Decl. III ¶¶ 15-21; Malas Decl. III Exs. 5, 7 (MTI Website; MTI Social Media). Defendants accepted Bitcoin from at least 23,000 U.S. participants, including 1,341 known participants located in the State of Texas. Compl. ¶ 22; Malas Decl. III ¶¶ 8-9. Defendants also relied heavily upon MLM marketers to tout MTI and paid both participation and referral bonuses to MLM touters from non-existent “profits.” Compl. ¶ 22; Malas Decl. III ¶¶ 9, 14, 15; Malas Decl. III Ex. 2 at MTI-TSSB-68-3 (TSSB Docs.), Ex. 5 at MTI-CFTC-WEB-3-10 (MTI Website).

2. Defendants’ Solicitations to Participants

13. Steynberg, individually and as the agent of MTI, made claims in social media and on MTI’s websites to actual and prospective participants that “the objective of Mirror Trading International is to grow your Bitcoin.” Compl. ¶ 23; Malas Decl. III ¶¶ 16, 21a; Malas Decl. III Ex. 5 at MTI-CFTC-WEB-3-6 (MTI Website). Steynberg, individually and as the agent of MTI, represented that MTI used “Bitcoin as its base currency” and “advanced digital software and artificial intelligence (AI) to trade on the international Forex markets,” and that MTI’s “[d]aily profits are divided in a sustainable manner and are added to member accounts.” Compl. ¶ 23; Malas Decl. III ¶¶ 16, 21b; Malas Decl. III Ex. 5 at MTI-CFTC-WEB-5-1 (MTI Website).

14. Defendants targeted their solicitations to non-ECPs with limited trading experience, claiming participants could earn “passive income” by funding their investment with “as little as \$100” and “no trading experience required.” Compl. ¶ 24; Malas Decl. III ¶¶ 16, 21b-21c; Malas Decl. III Ex. 5 at MTI-CFTC-WEB-5-1, 5-3 (MTI Website). The minimum participation amount was \$100, or a fraction of a Bitcoin. Compl. ¶ 24; Malas Decl. III ¶¶ 16, 21b; Malas Decl. III Ex. 5 at MTI-CFTC-WEB-5-1 (MTI Website).

15. Steynberg, individually and as the agent of MTI, represented through social media

and MTI's websites that there were "no membership fees, no subscriptions, no packages, no costs & no deductions." Compl. ¶ 25; Malas Decl. III ¶ 21j; Malas Decl. III Ex. 5 at MTI-CFTC-WEB-3-4 (MTI Website). Steynberg claimed MTI's trading "bot" achieved "profits" of 10% per month, and that the MTI Pool had never had a losing trading day except for one day. Compl. ¶ 25; Malas Decl. III ¶¶ 13, 36; Malas Decl. III Ex. 3 at MTI-FSCA-89-17 to 89-18 (FSCA Docs.), Ex. 5 at MTI-CFTC-WEB-3-21, 3-84, 5-4 (MTI Website). Steynberg represented via MTI's websites that MTI's "system is automated and does everything for you," and participants "will receive a statement detailing the income from the trades for the day." Compl. ¶ 25; Malas Decl. III ¶¶ 16, 21b, 21i; Malas Decl. III Ex. 5 at MTI-CFTC-WEB-3-1, 5-1 to 5-3 (MTI Website).

16. Defendants provided each pool participant access to what Defendants referred to as a "back office," which was an online statement each participant could access using their login credentials to view how much profit their Bitcoin investment purportedly earned in the Pool account. Compl. ¶ 26; Malas Decl. III ¶ 21i; Malas Decl. III Ex. 7 at MTI-CFTC-WEB-75_1-4 (MTI Social Media). Defendants advised participants that: "Your daily trade profits are automatically compounded in the trading pool." Compl. ¶ 26; Malas Decl. III ¶ 21m; Malas Decl. III Ex. 7 at MTI-CFTC-WEB-75_1-4 (MTI Social Media). Steynberg also represented to participants that they could withdraw their funds, in full or in part, at any time, and that participants' Bitcoin would be sent to their Bitcoin wallet within 48 hours of a withdrawal request. Compl. ¶ 26; Malas Decl. III ¶ 21k; Malas Decl. III Ex. 7 at MTI-CFTC-WEB-75_1-4 (MTI Social Media).

17. Steynberg testified under oath before the FSCA on July 20, 2020, that at the time of MTI's formation in April 2019, MTI purportedly entered into a profit-sharing agreement with

a trader named “Quintin,” who was to conduct all trading on behalf of all members. Compl. ¶ 29; Malas Decl. III ¶¶ 29-30; Malas Decl. III Ex. 3 at MTI-FSCA-31-30 to 31-31; 89-15 (FSCA Docs.). Steynberg testified that “Quintin” purportedly used an FXChoice multi-account manager (“MAM” account) “linked” to each participant’s individual account to control the trading in all participants’ accounts. Steynberg opened and controlled the MAM account in MTI’s name at FXChoice. Compl. ¶ 29; Malas Decl. III ¶¶ 29-30; Malas Decl. III Ex. 3 at MTI-FSCA-50-1 (FSCA Docs.).

18. Steynberg testified under oath before the FSCA that from April 2019 to July 2019, participants initially had their own accounts that were “linked” to the MetaTrader 4 (“MT4”) electronic trading platform, and MT4 traded the accounts automatically. Compl. ¶ 30; Malas Decl. III ¶ 29; Malas Decl. III Ex. 3 at MTI-FSCA-89-3, 89-15 (FSCA Docs.). Upon information and belief, at least 361 MTI participants held accounts in their personal name at FXChoice, in which forex trading took place during the period April 2019 through July 2019. Malas Decl. III ¶¶ 31a, 31c; *id.* Ex. 4 at MTI-BFSC-532, MTI-BFSC-52 to 56 (Belize International Financial Services Commission Docs). Steynberg testified that in July 2019, due to heavy trading losses, all participants had their purported individual accounts closed and all Bitcoin transferred to a single pooled account controlled by Defendants. Compl. ¶ 30; Malas Decl. III ¶ 30; Malas Decl. III Ex. 3 at MTI-FSCA-78-2 to 78-3, 89-3, 89-15 (FSCA Docs.). Specifically, Steynberg testified:

No our members do not have access to Meta Trader, when we just started in April last. I had it set up that every single member had his own account with the Brokerage themselves on a mam account. And then we, we actual (sic) back then had physical human traders and they good profit (sic) for April, May and in June they lost about 80 percent. So I got rid of them and got the software working for us...the only way not for people to steal our trades was to bring everything into a global pool which MTI has now and we do out (sic) trading you know, on that pool account.

Compl. ¶ 30; Malas Decl. III ¶ 30; Malas Decl. III Ex. 3 at MTI-FSCA-31-30 (FSCA Docs.).

19. Following the heavy losses sustained in the April to July 2019 time period,

Defendants sent a notice to each participant stating in relevant part:

Over the last couple of weeks, MTI had issues with the traders, which resulted in losses for ourselves and the members. We have a solution to recover all member's funds. Those willing to take the journey with us over the next few weeks will be happily surprised with the trading system that we managed to put together for our members. . . . At the moment, it is not possible to deploy the trading system on all FXChoice accounts due to licensing restrictions. We are, however, allowed to use the system in a pooled account environment. To switch to the pooled account, please follow the steps below.

Compl. ¶ 31; Malas Decl. III ¶ 32; Malas Decl. III Ex. 3 at MTI-FSCA-78-2 (FSCA Docs.).

3. The MTI Pooled Account at FXChoice

20. Defendants opened a single commodity pool account in the name of MTI at FXChoice, account No. **4850, in August 2019. Compl. ¶ 32; Malas Decl. III ¶ 34; Malas Decl. III Ex. 3 at MTI-FSCA-94-27 (FSCA Docs.). Defendants falsely represented that MTI operated a commodity pool that traded forex contracts and that the only assets they accepted for investment in the Pool account was Bitcoin. Compl. ¶ 32; Malas Decl. III ¶¶ 8, 34; Malas Decl. III Ex. 3 at MTI-FSCA-94-27 (FSCA Docs.). Specifically, Defendants claimed to be trading foreign currency pairs in the Pool account, initially at FXChoice, and later purportedly at Trade300. Compl. ¶ 32; Malas Decl. III ¶¶ 30, 31c, 45-48; Malas Decl. III Ex. 3 at MTI-FSCA-89-3 to 89-4, 89-15 (FSCA Docs.), Ex. 4 at MTI-BFSC-52 to 56 (Belize International Financial Services Commission Docs). Pool participants registered via Defendants' websites, and Defendants directed participants to transfer their Bitcoin to one of the MTI E-Wallets, which were controlled by Steynberg. Compl. ¶ 32; Malas Decl. III ¶¶ 28, 34; Malas Decl. III Ex. 3 at MTI-FSCA-89-14, 94-27 (FSCA Docs.). Defendants then purportedly transferred the Bitcoin to the MTI Pool account at FXChoice, and later, to an MTI Pool account at Trade300.

Compl. ¶ 32; Malas Decl. III ¶¶ 28, 33, 45-48; Malas Decl. III Ex. 3 at MTI-FSCA-38-2 to 38-7, 78-2 to 78-3, 89-4, 89-14 (FSCA Docs). Throughout the Relevant Period, Steynberg was in sole control of the MTI E-Wallets receiving participants' funds and controlled the movement of Bitcoin from the MTI E-Wallets to FXChoice accounts and elsewhere. Compl. ¶ 33; Malas Decl. III ¶¶ 34, 41c; Malas Decl. III Ex. 3 at MTI-FSCA-89-14, 94-27 (FSCA Docs).

21. Beginning on or about August 2019, Steynberg, individually and as the agent of MTI, represented that MTI used a high frequency artificial intelligence trading "bot," together with a "head trader" and a "trading team," that purportedly traded the Pool's account at FXChoice, earning large profits. Compl. ¶ 34; Malas Decl. III ¶¶ 32, 35-36; Malas Decl. III Ex. 3 at MTI-FSCA-13-3, 89-3, 89-16 to 89-17 (FSCA Docs.). These representations were false. FXChoice records show that the Pool account traded using only a small fraction of participants' Bitcoin, that this limited trading was at an overall loss, and that Steynberg made many of the trades via a mobile device. Compl. ¶ 34; Malas Decl. III ¶¶ 13, 38; Malas Decl. III Ex. 3 at MTI-FSCA-36-1, 49-4, 89-4, 89-18 to 89-19 (FSCA Docs).

22. After Defendants created the purported FXChoice Pool account, they provided "trading statements" showing profitable trades on behalf of the Pool in this account. Compl. ¶ 35; Malas Decl. III ¶¶ 26d, 37, 38b; Malas Decl. III Ex. 3 at MTI-FSCA-36, 49-4, 89-18 to 89-21 (FSCA Docs). In fact, these "trading statements" were not associated with any actual pooled accounts, but were in fact statements from a simulated "demo" account that never actually traded forex, Bitcoin or anything else. Compl. ¶ 35; Malas Decl. III ¶¶ 26d, 37-38; Malas Decl. III Ex. 3 at MTI-FSCA-36-1 to 36-4, 89-3, 89-19 to 89-21 (FSCA Docs.). Defendants failed to disclose to participants that all of Defendants' representations to participants regarding trading, profitability and/or the existence of a commodity pool account were false. Compl. ¶ 35; Malas

Decl. III ¶¶ 26a-26d; Malas Decl. III Ex. 3 at MTI-FSCA-36-1 to 36-4, 49, 71-4, 78-1, 89-18 to 89-21, 89-35 to 89-36 (FSCA Docs.). Defendants further failed to disclose to participants that all of the purported “trading statements” were false and created by Defendants. Compl. ¶ 35; Malas Decl. III ¶¶ 37-38; Malas Decl. III Ex. 3 at MTI-FSCA-36-1 to 36-4, 89-19 to 89-21 (FSCA Docs.).

4. The Final Phase of the Scheme

23. On or about June 8, 2020, FXChoice began receiving complaints from MTI participants that the trades shown in MTI’s trading reports provided to participants did not correlate with the live trades purportedly made in MTI’s Pool account. Compl. ¶ 36; Malas Decl. III ¶ 38; Malas Decl. III Ex. 3 at MTI-FSCA-36-1 to 36-4, 89-19 (FSCA Docs.). FXChoice conducted a compliance review of the MTI Pool account and determined that the “account statements” provided to participants were actually simulated trades from “demo” accounts created by Steynberg via the MT4 application. Compl. ¶ 36; Malas Decl. III ¶ 38a; Malas Decl. III Ex. 3 at MTI-FSCA-36-1 to 36-4, 89-19 (FSCA Docs.). FXChoice further determined that Defendants deleted any of the “demo” accounts’ “losing” trades in the “account statements” and presented only “winning trades,” thereby giving the false impression to participants that Defendants’ trading “bot” was profitably trading. Compl. ¶ 35; Malas Decl. III ¶ 38b; Malas Decl. III Ex. 3 at MTI-FSCA-36-1 to 36-4, 89-19 (FSCA Docs.). Finally, FXChoice determined that a number of trades in MTI’s FX Choice Pool account were manually placed via a mobile device. Compl. ¶ 36; Malas Decl. III ¶ 38c; Malas Decl. III Ex. 3 at MTI-FSCA-89-19 (FSCA Docs.).

24. As a result of its compliance investigation, on June 10, 2020, FXChoice blocked all transactions in MTI’s Pool account pending a compliance review. Compl. ¶ 37; Malas Decl.

III ¶ 39; Malas Decl. III Ex. 3 at MTI-FSCA-36-2, 89-21 (FSCA Docs). On July 13, 2020, Steynberg unsuccessfully attempted to withdraw 280 Bitcoin from the blocked Pool account. Compl. ¶ 37; Malas Decl. III ¶ 39; Malas Decl. III Ex. 3 at MTI-FSCA-36-2 (FSCA Docs.). FXChoice refused Defendants' withdrawal request and informed Defendants that they were required to provide audited financial statements for MTI. Compl. ¶ 37; Malas Decl. III ¶ 39; Malas Decl. III Ex. 3 at MTI-FSCA-36-2 (FSCA Docs.). As a result of Defendants' failure to provide FXChoice with the requested audited financial statements, on August 7, 2020, FXChoice marked the Pool account No.**4850 as "fraud" and froze the 1,280 Bitcoin remaining in the account. Compl. ¶ 37; Malas Decl. III ¶ 39; Malas Decl. III Ex. 3 at MTI-36-2, 56-2 to 56-3, 89-21 (FSCA Docs.).

25. Subsequently, Steynberg represented to participants that MTI would transfer all of the Pool's trading accounts from FXChoice to a purported online broker identified as Trade300. Compl. ¶ 38; Malas Decl. III ¶ 45; Malas Decl. III Ex. 3 at MTI-FSCA-89-4 (FSCA Docs.). Steynberg further represented to participants that Trade300 was another online forex trading platform, and that MTI continued to earn large profits while trading through Trade300. Compl. ¶ 38; Malas Decl. III ¶ 45; Malas Decl. III Ex. 3 at MTI-FSCA-89-4 (FSCA Docs.). Steynberg testified before the FSCA that MTI's Pool account at Trade300 averaged trading profits of 10% per day, and that the MTI Pool account had never experienced a negative profit trading day. Compl. ¶ 38; Malas Decl. III ¶¶ 13, 45-46; Malas Decl. III Ex. 3 at MTI-FSCA-89-4, 89-17 (FSCA Docs.). Upon information and belief, Trade300 is a fictitious trade broker created by Steynberg to further the fraudulent scheme. Compl. ¶ 38; Malas Decl. III ¶ 47; Malas Decl. III Ex. 3 at MTI-FSCA-89-23 to 89-31 (FSCA Docs.), Ex. 5 at MTI-CFTC-WEB-73 (MTI Website).

Defendants' Misappropriation and Commingling of Participants' Funds

26. Steynberg, individually and as the agent of MTI, misappropriated pool participants' funds by soliciting funds for trading on behalf of the Pool and then depositing and holding participants' funds in E-Wallets controlled by Steynberg instead of segregating the funds in a pool account and using the funds to trade on behalf of the Pool's participants. Compl. ¶ 39; Malas Decl. III ¶¶ 14, 23-25; Malas Decl. III Ex. 3 at MTI-FSCA-65-6 to 65-9, 78-1, 89-16 to 89-18 (FSCA Docs.).

27. Throughout the Relevant Period, participants sent 29,421 Bitcoin to Defendants' E-Wallets as instructed. Compl. ¶ 40; Malas Decl. III ¶¶ 8, 10, 24, 41c; Malas Decl. III Ex. 3 at MTI-FSCA-49-1 to 49-3, 78-1, 89-18 (FSCA Docs.). However, Defendants deposited only 1,846.72 of participants' 29,421 Bitcoin into the FXChoice Pool account. Compl. ¶ 40; Malas Decl. III ¶¶ 12, 24, 41c; Malas Decl. III Ex. 3 at MTI-FSCA-36-1, 46-3, 49-1 to 49-3, 78-1, 89-18 (FSCA Docs.). Defendants never deposited the remaining 27,574 Bitcoin into the FXChoice Pool account or any account at Trade300, and failed to use those funds for any trading on behalf of participants. Compl. ¶ 40; Malas Decl. III ¶ 12, 14, 24-25; Malas Decl. III Ex. 3 at MTI-FSCA-46-3, 49-1 to 49-3, 78-1, 89-18 (FSCA Docs.). Instead, Steynberg, individually and as the agent of MTI, misappropriated participants' Bitcoin for his personal use. Compl. ¶ 40; Malas Decl. III ¶¶ 14, 23-25; Malas Decl. III Ex. 3 at MTI-FSCA-46-3, 49-1 to 49-3, 65-6 to 65-9, 78-1, 89-18 (FSCA Docs.).

28. Defendants also misappropriated some of participants' funds by providing Bitcoin to certain participants as purported trading "profits" or "bonuses" in order to create the illusion that the Pool was trading and trading profitably. Compl. ¶ 41; Malas Decl. III ¶¶ 14, 23; Malas Decl. III Ex. 3 at MTI-FSCA-49-1 to 49-3 (FSCA Docs.).

29. At no time did Defendants create, or MTI operate, the Pool as an entity cognizable as a legal entity separate from the pool operator, MTI. As a result, at no time were any assets, in this case Bitcoin, from pool participants received in the Pool's name because a separate legal entity in the name of the Pool was never created. Compl. ¶ 42; Malas Decl. III ¶¶ 7a, 9, 10, 22, 24-25; Malas Decl. III Ex. 1 at MTI-NFA-2-1, 5-1 to 5-2, 6-1 to 6-2 (NFA Certs.), Ex. 2 at MTI-TSSB-68-9 (TSSB Docs.), Ex. 3 at MTI-FSCA-89-35 (FSCA Docs.).

30. During the Relevant Period, Defendants, by and through Steynberg, failed to maintain pool assets separately from Steynberg's own funds. Compl. ¶ 43; Malas Decl. III ¶ 26b; Malas Decl. III Ex. 3 at MTI-FSCA-49-1 to 49-3, 65-6 to 65-9, 89-35 to 89-36 (FSCA Docs.). Steynberg, individually and as the agent of MTI, commingled pool participants' assets with personal funds of Steynberg. Compl. ¶ 43; Malas Decl. III ¶¶ 23-25; Malas Decl. III Ex. 3 at MTI-FSCA-46-3, 49-1 to 49-3, 65-6 to 65-9, 78-1, 89-18 (FSCA Docs.). Defendants held participants' assets in Steynberg's personal E-Wallets instead of segregating them in a pool account. Compl. ¶ 43; Malas Decl. III ¶¶ 25, 26b, 41c, 42-44; Malas Decl. III Ex. 3 at MTI-FSCA-36-1, 49-1 to 49-3, 65-6 to 65-9, 78-1, 89-35 to 89-36 (FSCA Docs.).

Defendants' Material Omissions and Misrepresentations of Material Facts

31. In furtherance of the fraudulent scheme, Defendants knowingly made material omissions of fact in solicitations and other communications with actual and prospective pool participants, including by failing to disclose that:

- a. Defendants misappropriated pool participants' funds by soliciting funds for trading and then retaining participants' funds in Steynberg's personal E-Wallets instead of segregating the funds in a pool account and using the funds to trade on behalf of the Pool. Compl. ¶ 44a; Malas Decl. III ¶¶ 23-25, 26b; Malas Decl. III Ex. 3 at MTI-FSCA-46-3, 49-1 to 49-3, 65-6 to 65-9, 78-1, 89-18, and 89-35 to 89-36 (FSCA Docs.);

- b. There was no trading “bot” successfully trading on behalf of participants. Compl. ¶ 44b; Malas Decl. III ¶¶ 13, 26a; Malas Decl. III Ex. 3 at MTI-FSCA-36-1 to 36-4, 49-1 to 49-3, 71-4, 89-18 (FSCA Docs.);
- c. No profitable trading in forex, or anything else, took place on behalf of pool participants. Compl. ¶ 44c; Malas Decl. III ¶¶ 13, 26a-26d, 38; Malas Decl. III Ex. 3 at MTI-FSCA-36-1 to 36-4, 49-1 to 49-3, 71-4, 89-19 to 89-21 (FSCA Docs.);
- d. “Account statements” provided to participants were actually simulated trades from “demo” accounts created via the MT4 application. Compl. ¶ 44d; Malas Decl. III ¶¶ 26d, 38a; Malas Decl. III Ex. 3 at MTI-FSCA-36-1 to 36-4, 89-19 to 89-21 (FSCA Docs.);
- e. The broker Trade300 did not exist and was created by Steynberg to further the fraudulent scheme. Compl. ¶ 44e; Malas Decl. III ¶ 47; Malas Decl. III Ex. 3 at 89-23 to 89-31 (FSCA Docs.), Ex. 5 at MTI-CFTC-WEB-73 (MTI Website); and,
- f. Purported “returns” paid to some pool participants were in fact the principal deposits of other participants and were not generated by profitable trading. Compl. ¶ 44f; Malas Decl. III ¶ 26c; Malas Decl. III Ex. 3 at MTI-FSCA-49-1 to 49-3, 89-18 (FSCA Docs.).

32. Similarly, during the Relevant Period, Defendants, by and through Steynberg, misrepresented, among other things, that:

- a. Pool participants’ Bitcoin would be pooled and used to trade forex contracts on participants’ behalf. Compl. ¶ 45a; Malas Decl. III ¶¶ 13, 23-25, 26a to 26d, 38; Malas Decl. III Ex. 3 at MTI-FSCA-36-1 to 36-4, 46-3, 49-1 to 49-3, 65-6 to 65-9, 71-4, 78-1, 89-18, 89-35 to 89-36 (FSCA Docs.), Ex. 5 at MTI-CFTC-WEB-5-1 (MTI Website);
- b. Profits were achieved through trading. Compl. ¶ 45b; Malas Decl. III ¶¶ 13, 26a-26d, 38; Malas Decl. III Ex. 3 at MTI-FSCA-36-1 to 36-4, 46-3, 49-1 to 49-3, 65-6 to 65-9, 71-4, 78-1, 89-18, 89-35 to 89-36 (FSCA Docs.), Ex. 5 at MTI-CFTC-WEB-5-1 (MTI Website); and
- c. Trading “profits” were distributed to participants. Compl. ¶ 45c; Malas Decl. III ¶¶ 13, 26a-26d, 38; Malas Decl. III Ex. 3 at MTI-FSCA-36-1 to 36-4, 46-3, 49-1 to 49-3, 65-6 to 65-9, 71-4, 78-1, 89-18, 89-35 to 89-36 (FSCA Docs.).

33. These representations were false because Defendants deposited only a small portion of participants’ Bitcoin into the FXChoice Pool account for a limited time period. Compl. ¶ 46; Malas Decl. III ¶¶ 12, 24, 41c; Malas Decl. III Ex. 3 at MTI-FSCA-36-1 to 36-4, 46-3, 49-1 to 49-3, 78-1, 89-18 (FSCA Docs.). The FXChoice Pool account never traded

profitably, there was no Trade300 account, and there were no profits to distribute to participants. Compl. ¶ 46; Malas Decl. III ¶¶ 13, 23-25, 26a-26d, 38, 46; Malas Decl. III Ex. 3 at MTI-FSCA-36-1 to 36-4, 49-1 to 49-3, 65-6 to 65-9, 71-4, 89-18 to 89-19, 89-25, 89-29, 89-35 to 89-36 (FSCA Docs.), Ex. 5 at MTI-CFTC-WEB-73 (MTI Website).

Defendants' Failure to Register

34. During the Relevant Period, MTI acted in a capacity as a CPO by soliciting, accepting, and receiving funds, securities, or property, in this case Bitcoin, from the public while engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of, among other things, trading in forex, without being registered with the CFTC as a CPO. Compl. ¶ 47; Malas Decl. III ¶¶ 7a, 8, 26e; Malas Decl. III Ex. 1 at MTI-NFA-2-1, 5-1 to 6-2 (NFA Certs.).

35. Throughout the Relevant Period, Steynberg acted in a capacity as an AP of MTI by, in his capacity as a partner, officer, employee, consultant or agent of the CPO MTI, soliciting or supervising the solicitation of funds for participation in the Pool, without being registered with the CFTC as an AP of a CPO. Compl. ¶ 48; Malas Decl. III ¶¶ 7b, 8, 26e; Malas Decl. III Ex. 1 at MTI-NFA-2-1, 7-1 to 8-2 (NFA Certs.).

36. On or about July 7, 2020, the Texas State Securities Board ("TSSB") issued a Cease and Desist Order against Steynberg and MTI, among others, finding their solicitations were materially misleading, and that they were operating a fraudulent MLM scheme involving digital assets and forex, which had defrauded Texas residents. Compl. ¶ 49; Malas Decl. III ¶ 9; Malas Decl. III Ex. 2 at MTI-TSSB-68-1 to 68-17 (TSSB Docs.). The TSSB ordered Steynberg and MTI to immediately cease and desist all operations in the State of Texas. Compl. ¶ 49; Malas Decl. III ¶ 9; Malas Decl. III Ex. 2 at MTI-TSSB-68-16 to 68-17 (TSSB Docs.). Despite

the issuance of this Order, upon information and belief Defendants continued to unlawfully solicit residents in Texas. Compl. ¶ 49; Malas Decl. III ¶ 9.

B. Conclusions of Law

1. Defendant's Failure to Properly Answer Warrants Entry of Default Judgment

37. Fed. R. Civ. P. 55 authorizes a default judgment when “a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend.” Fed. R. Civ. P. 55(a). A default judgment issued by a court pursuant to Fed. R. Civ. P. 55(b)(2) after the court clerk’s entry of default is within the trial court’s sound discretion. *Gonzales v. Smitty*, No. 1:20-cv-0605, 2021 WL 8055637, at *2 (W.D. Tex. Oct. 7, 2021) (citing *Mason v. Lister*, 562 F.2d 343, 345 (5th Cir. 1977)). In making the determination of whether a default judgment is warranted, district courts in the Fifth Circuit utilize a three-step analysis: (1) whether default judgment is procedurally proper, based upon six factors identified in *Lindsey v. Prive Corp.* 161 F.3d 886 (5th Cir. 1998); (2) if procedurally proper, “whether the plaintiffs’ claims are substantively meritorious;” and (3) if substantively meritorious, whether the requested relief is appropriate. *CFTC v. Ramirez*, No. 4:19-cv-140, 2019 WL 4198857, at *7 (S.D. Tex. July 17, 2021) (default order) (quoting *Travelers Cas. & Sur. Co. of Am. v. HighMark Constr. Co., LLC*, No. 7:16-cv-00255, 2018 WL 4334016, at *2 (S.D. Tex. May 5, 2018)). All of these elements weigh in favor of the entry of default judgment. The well-pleaded facts of the Complaint establish Defendant’s liability, and the evidence submitted by the CFTC establishes the appropriate amount of restitution and civil monetary penalty to be awarded.

2. Jurisdiction and Venue

38. The Court has jurisdiction over has jurisdiction over this action pursuant to 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the CFTC that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order promulgated thereunder, the CFTC may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

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

3. Steynberg Violated 7 U.S.C. § 6b(a)(2)(A)-(C) and 17 C.F.R. § 5.2(b)(1)-(3) (2022) (Count I: Fraud in Connection with Forex Contracts)

40. 7 U.S.C. § 6b(a)(2)(A)-(C) of the Act makes it unlawful for any person: (A) to cheat or defraud or attempt to cheat or defraud another person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; or (C) willfully to deceive or attempt to deceive another person by any means whatsoever in connection with certain off-exchange commodity contracts. Pursuant to 7 U.S.C. § 2(c)(2)(C)(iv), 7 U.S.C. § 6b applies to the forex agreements, contracts, or transactions offered by Defendants “as if” they were contracts of sale of a commodity for future delivery. Further, 7 U.S.C. § 2(c)(2)(C)(ii)(I) makes the forex agreements, contracts, or transactions at issue here “subject to” 7 U.S.C. § 6b. Finally, 7 U.S.C. § 2(c)(2)(C)(vii) makes clear that the CFTC has jurisdiction over an account or pooled investment vehicle that is offered for the purpose of forex transactions described in 7 U.S.C. § 2(c)(2)(C)(i).

41. In substantially identical language to 7 U.S.C. § 6b(a)(2)(A)-(C), 17 C.F.R. § 5.2(b)(1)-(3) (2022) makes it unlawful for any person, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction: (1) to cheat or defraud or attempt to cheat or defraud any person; (2) willfully to make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or (3) willfully to deceive or attempt to deceive any person by any means whatsoever. However, unlike in 7 U.S.C. § 6b(a)(2)(A)-(C), 17 C.F.R. § 5.2(b)(1)-(3) (2022) requires that the acts or omissions involve “instrumentalities of interstate commerce.” Here, Defendants used instrumentalities of interstate commerce, including emails and websites, to fraudulently solicit, misrepresent, or omit material facts, misappropriate funds, and provide false trading account statements to participants. Compl. ¶¶ 1, 3, 22, 32; Malas Decl. III ¶¶ 13-21, 23-26, 36-38; Malas Decl. III Ex. 2 at MTI-TSSB-68-1 to 68-17 (TSSB Docs.), Ex. 3 at MTI-FSCA-36-1 to 36-4, 49-1 to 49-3, 65-1 to 65-9, 89-3 to 89-36 (FSCA Docs.), Ex. 5 at MTI-TSSB-204-1 to 204-3 (TSSB Docs.), Ex. 7 at MTI-CFTC-WEB-7-1 to 7-3, 75_1 to 77_1-6 (MTI Social Media).

i. Steynberg Committed Fraud by Making Omissions and Misrepresentations of Material Fact

1. Omissions and Misrepresentations

42. To establish liability for fraud based on misrepresentations and omissions under 7 U.S.C. § 6b(a)(2)(A)-(C), the CFTC 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. *R.J. Fitzgerald*, 310 F.3d at 1328; *see also In re Slusser*, CFTC No. 94-14, 1999 WL 507574, at *9 (July 19, 1999) (holding that CFTC’s findings regarding fraud were supported by substantial

evidence), *aff'd and remanded on other grounds sub nom.*, *Slusser v. CFTC*, 210 F.3d 783, 785-86 (7th Cir. 2000). Similarly, 17 C.F.R. § 5.2(b)(1)-(3) (2022) makes it unlawful, in connection with off-exchange retail forex transactions, to use the mails or any means or instrumentality of interstate commerce to cheat or defraud or attempt to cheat or defraud any person, or willfully deceive any person by any means. *CFTC v. Alcocer*, No. 1:12-cv-23459, 2013 WL 12104892, at *9 (S.D. Fla. Apr. 5, 2013) (default order).

43. When determining whether a misrepresentation has been made, one must look to the “overall message” and the “common understanding of the information conveyed.” *R.J. Fitzgerald*, 310 F.3d at 1328 (internal quotation marks and citation omitted). “Any guarantee of profit and assurance against loss in the context of futures trading is inherently a fraudulent misrepresentation because investments in futures transactions necessarily depend on speculative predictions about an unpredictable future and risk is unavoidable.” *CFTC v. Std. Forex, Inc.*, No. 1:93-cv-88, 1993 WL 809966, at *21 (E.D.N.Y. Aug. 9, 1993). Failure to inform customers about the inherent risks associated with trading commodity option contracts “while projecting large profits amounts to fraud.” *CFTC v. Commonwealth Fin. Grp.*, 874 F. Supp. 1345, 1354 (S.D. Fla. 1994); *see also CFTC v. Weinberg*, 287 F. Supp. 2d 1100, 1107 (C.D. Cal. 2003) (finding that “by guaranteeing profits to his investors, [defendant] made material misrepresentations that constitute fraud under Sections 4b(a)(i) and (iii) of the Act”).

44. During the Relevant Period, Steynberg committed fraud, including by making omissions and misrepresentations of material fact to attract and retain participants to enter into forex transactions in violation of 7 U.S.C. § 6b(a)(2)(A)-(C) and 17 C.F.R. § 5.2(b)(1)-(3) (2022). Compl. ¶ 54; Malas Decl. III ¶¶ 9, 26; Malas Decl. III Ex. 2 at MTI-TSSB-68-1 to 68-17 (TSSB Docs.), Ex. 3 at MTI-FSCA-36-1 to 36-4, 49-1 to 49-3, 65-6 to 65-9, 71_4, 89-18 to 89-

21, 89-35 to 89-36 (FSCA Docs.). Steynberg failed to disclose, among other things, that: (1) Defendants misappropriated pool participants' funds by soliciting funds for trading and then retaining participants' funds in Steynberg's personal E-Wallets instead of segregating the funds in a pool account and using the funds to trade on behalf of participants as promised; (2) Defendants were not registered with the CFTC as CPOs and as an AP of a CPO, respectively, as required by the Act and were therefore operating an unlawful business enterprise; and (3) purported "returns" paid to some participants were in fact the principal deposits of other participants. Compl. ¶ 44; Malas Decl. III ¶ 26; Malas Decl. III Ex. 3 at MTI-FSCA-36-1 to 36-4, 49-1 to 49-3, 65-6 to 65-9, 71_4, 89-18 to 89-21, 89-35 to 89-36 (FSCA Docs.).

45. Similarly, during the Relevant Period, Steynberg has misrepresented, among other things, that: (1) pool participants' Bitcoin would be pooled and used to trade binary options contracts for the benefit of participants; (2) profits were achieved through trading; and (3) trading profits were distributed to participants. Compl. ¶ 45; Malas Decl. III ¶¶ 13, 22-25, 26a-26d, 38; Malas Decl. III Ex. 3 at MTI-FSCA-36-1 to 36-4, 46-3, 49-1 to 49-3, 65-6 to 65-9, 71-4, 78-1, 89-3 to 89-4, 89-17 to 89-21, 89-35 to 89-36 (FSCA Docs.), Ex. 5 at MTI-CFTC-WEB-3-1, 3-3(MTI Website). These representations were false because only a small portion of participants' Bitcoin was deposited into the FXChoice Pool account for a limited time period; the FXChoice Pool account never traded profitably; and there were no profits to distribute to participants. Compl. ¶ 46; Malas Decl. III ¶¶ 11-12, 22-26d, 37, 40c, 46; Malas Decl. III Ex. 3 at MTI-FSCA-36-1 to 36-4, 50-1, 71-4, 89-3 to 89-4, 89-18 to 89-19, 89-35 to 89-36 (FSCA Docs.).

2. Scierter

46. To establish the scierter element of fraud, the CFTC must show that Steynberg's conduct was either reckless or intentional. "Proof of scierter requires evidence that a Defendant

committed the alleged wrongful acts intentionally, or that the representations were made with a reckless disregard for their truth or falsity.” *CFTC v. Driver*, 877 F. Supp. 2d 968, 977 (C.D. Cal. 2012) (internal citations and quotations omitted); *see also CFTC v. Noble Metals Int’l, Inc.*, 67 F.3d 766, 774 (9th Cir. 1995) (holding that scienter is established when defendants act intentionally or with “careless disregard”); *CFTC v. Nat’l Invest. Consultants, Inc.*, No. 3:05-cv-02641, 2005 WL 2072105, at *8 (N.D. Cal. Aug. 26, 2005) (holding that CFTC can establish scienter by showing that a defendant “knew the representations were false and were calculated to cause harm” or by showing “the representations were made with a reckless disregard for their truth or falsity”) (citing *CFTC v. Noble Wealth Data Info. Servs., Inc.*, 90 F. Supp. 2d 676, 686 (D. Md. 2000), *aff’d in part, vacated in part, sub nom. CFTC v. Baragosh*, 278 F.3d 319 (4th Cir. 2002)). The CFTC need not prove “an evil motive or intent to injure a customer.” *Cange v. Stotler & Co.*, 826 F.2d 581, 589 (7th Cir. 1987).

47. Steynberg, individually and as principal and agent of MTI, knew that he was making omissions and misrepresentations to actual and prospective participants when he touted his trading experience and profitable trading. Compl. ¶¶ 44-45; Malas Decl. III ¶¶ 13, 26c, 38b; Malas Decl. III Ex. 3 at MTI-FSCA-49-1 to 49-3, 89-17 to 89-18 (FSCA Docs.), Ex. 5 at MTI-CFTC-WEB-3-21, 5-4 (MTI Website). In reality, Steynberg knew or acted with reckless disregard of the fact that he unprofitably traded only a small portion of the 29,421 Bitcoin he accepted from participants, and that he misappropriated the remaining Bitcoin. Compl. ¶¶ 39-43, 46; Malas Decl. III ¶¶ 12-13, 24-25, 41c; Malas Decl. III Ex. 3 at MTI-FSCA-36-1 to 36-4, 46-3, 49-1 to 49-3, 65-6 to 65-9, 78-1, 89-17 to 89-18 (FSCA Docs.). As the holder of the E-Wallets and Bitcoin addresses used to collect funds from participants, and the person in control of the Pool account at FXChoice who received actual account statements, Steynberg had personal

knowledge of the amount of funds accepted from participants and the disposition of those funds, as well as the absence of trading on behalf of participants as promised. Compl. ¶¶ 32-33; Malas Decl. III ¶¶ 8, 30, 34, 41c; Malas Decl. III Ex. 3 at MTI-FSCA-31-30, 36-1 to 36-4, 49-3, 78-1 to 78-3, 89-3, 89-15, 89-18 (FSCA Docs.). Finally, Steynberg knew or acted in reckless disregard of the facts when he failed to disclose that neither he nor MTI were registered with the CFTC as required, and Defendants were therefore operating an unlawful business enterprise. Compl. ¶¶ 47-48; Malas Decl. III ¶¶ 7, 26e; Malas Decl. III Ex. 1 at MTI-NFA-2-1, 5-1 to 8-2 (NFA Certs.).

3. Materiality

48. A statement is material if “there is a substantial likelihood that a reasonable investor would consider the information important in making a decision to invest.” *In re R&W Tech. Servs. Ltd.*, CFTC No. 96-3, 1999 WL 152619, at *21 (Mar. 16, 1999), *aff’d in part R&W Tech. Serv. Ltd. v. CFTC*, 205 F.3d 165 (5th Cir. 2000); *see also R.J. Fitzgerald*, 310 F.3d at 1328-29; *CFTC v. Matrix Trading Grp., Inc.*, No. 9:00-cv-8880, 2002 WL 31936799, at *6 (S.D. Fla. Oct. 3, 2002) (finding defendants misrepresented and omitted material facts concerning likelihood and extent of profits to be made trading commodity options, risks inherent in trading such options, and actual performance record in trading commodity options). Any fact that enables an investor to assess independently the risk inherent in their investment and the likelihood of profit is a material fact. *See Driver*, 877 F. Supp. 2d at 977 (finding “[m]isrepresentations of profit and risk are material”); *Matrix Trading Grp.*, 2002 WL 31936799, at *6 (finding misstatements and omissions regarding “profit potential, risk of loss, and performance record” were material because “a reasonable investor would have relied on these statements in determining whether to invest”). “Misrepresentations as to the trading record

and experience of a firm or broker are fraudulent because past success and experience are material factors to reasonable customers.” *CFTC v. Next Fin. Servs. Unlimited*, No. 9:04-cv-80562, 2006 WL 889421, at *4 (S.D. Fla. Mar. 30, 2006). Furthermore, misrepresentations regarding profitability are material because customers or potential customers are likely to rely on such information when making their investment decisions. *See Commonwealth Fin. Grp., Inc.*, 874 F. Supp. at 1354.

49. As outlined above, Steynberg, individually and as principal and agent of MTI, made materially false and misleading statements or omissions of facts to participants. Compl. ¶¶ 44-45; Malas Decl. III ¶¶ 7b, 9, 26; Malas Decl. III Ex. 1 at MTI-NFA-2-1, 7-1 to 8-2 (NFA Certs.), Ex. 2 at MTI-TSSB-68-1 to 68-17 (TSSB Docs.), Ex. 3 at MTI-FSCA-36-1 to 36-4, 49-1 to 49-3, 65-6 to 65-9, 71-4, 89-19 to 89-21, 89-35 to 89-36 (FSCA Docs.). In order to conceal and continue the fraudulent scheme, Steynberg made, individually and as the agent of MTI, numerous representations to participants as to why Defendants were not paying profits. Steynberg’s omissions and misrepresentations were material because they impacted the participants’ decisions to invest, remain in the Pool, or make additional investments.

ii. Steynberg Committed Fraud by Misappropriation

50. The CFTC may also prove fraud if it can show that a person or entity misappropriated customer funds. *See Noble Wealth Data*, 90 F. Supp. 2d at 687 (misappropriation of customer funds, by diverting them to pay for operating and personal expenses, salaries and other expenses, constituted willful and blatant fraudulent activity). Misappropriation of customer funds in connection with forex trading constitutes fraud in violation of 7 U.S.C. § 6b(a)(2)(A) and (C). *See Driver*, 877 F. Supp. 2d at 978 (finding that “[s]oliciting or obtaining funds from investors for trading, then failing to trade the funds while

using them for personal and business expenses, is misappropriation” and granting summary judgment to CFTC on claims that CPO’s misappropriation of customer funds violated 7 U.S.C. § 6b and 6o); *Weinberg*, 287 F. Supp. 2d at 1106 (“Defendant’s misappropriation of funds entrusted to him for trading purposes is ‘willful and blatant fraudulent activity’ that clearly violates Section 4b(a) of the Act.” (quoting *Noble Wealth Data*, 90 F. Supp. 2d at 687)); *CFTC v. Giddens*, No. 1:11-cv-2038, 2013 WL 12244536, at *9 (N.D. Ga. Jan. 31, 2013) (“[A] ‘misappropriation’ of investor funds must involve, at a minimum, the intentional taking or use of an investor’s money in violation of the terms agreed to by the investor.”).

51. Here, Steynberg misappropriated participants’ Bitcoin by soliciting Bitcoin for trading and then holding participants’ Bitcoin in his personal E-Wallets instead of segregating the assets in a pool account and using the funds to trade forex contracts on behalf of participants as promised. Compl. ¶¶ 39; 43; Malas Decl. III ¶¶ 14, 23-25; Malas Decl. III Ex. 3 at MTI-FSCA-49-1 to 49-3, 65-6 to 65-9, 78-1, 89-18 (FSCA Docs.), Ex. 5 at MTI-CFTC-WEB-3-1, 3-3 (MTI Website). Upon information and belief, Steynberg also misappropriated the majority of participants’ Bitcoin by using the principal deposits of certain participants to pay other participants in the manner of a Ponzi scheme. Compl. ¶¶ 6, 41; Malas Decl. III ¶¶ 14, 23, 26c. His conduct constitutes willful and fraudulent activity in violation of 7 U.S.C. § 6b(a)(2)(A)-(C) and 17 C.F.R. § 5.2(b)(1)-(3) (2022). *See CFTC v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985) (finding defendant violated 7 U.S.C. § 6b when she misappropriated pool funds by soliciting funds for trading and then trading only a small percentage of those funds, while disbursing the rest of the funds to pool participants, herself, and her family); *In re Slusser*, 1999 WL 507574, at *12 (finding respondents violated 7 U.S.C. § 6b by surreptitiously retaining pool money in their own bank accounts that should have been traded on behalf of participants).

b. Steynberg Violated 7 U.S.C. § 6o(1)(A), (B) (Count II: Fraud by an AP of a CPO)

52. 7 U.S.C. § 6o(1)(A), (B), in relevant part, makes it unlawful for an AP of a CPO, by use of the mails or any other means of interstate commerce, directly or indirectly, to: (A) employ any device, scheme, or artifice to defraud any participant; or (B) engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any participant. “[7 U.S.C. § 6o(1)(A), (B)] of the Act broadly prohibits fraudulent conduct by a Commodity Pool Operator” and “applies to all CPOs [and APs] whether registered, required to be registered, or exempted from registration.” *Weinberg*, 287 F. Supp. 2d at 1107-08 (citing *CFTC ex rel. Kelley v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985)). Unlike 7 U.S.C. § 6o(1)(A) of the Act, the language of 7 U.S.C. § 6o(1)(B) does not require scienter as a prerequisite for establishing liability. *See, e.g., Commodity Trend Serv., Inc. v. CFTC*, 233 F.3d 981, 993 (7th Cir. 2000); *Messer v. E.F. Hutton & Co.*, 847 F.2d 673, 678-79 (11th Cir. 1988); *First Nat’l Monetary Corp. v. Weinberger*, 819 F.2d 1334, 1342 (6th Cir. 1987).

53. The same conduct that constitutes violations of 7 U.S.C. § 6b(a)(2)(A)-(C) described above (*i.e.*, Steynberg’s misrepresentations and omissions) also constitutes violations of 7 U.S.C. § 6o(1)(A), (B). *See Weinberg*, 287 F. Supp. 2d at 1108 (finding the “same conduct” by defendant that violates 7 U.S.C. § 6b(a)(2)(A)-(C) also violates 7 U.S.C. § 6o(1)(A), (B)). Even if the CFTC was unable to prove that Steynberg, individually and as principal and agent of MTI, had the requisite scienter under 7 U.S.C. § 6o(1)(A) (which is highly unlikely in light of the alleged facts), the evidence is more than sufficient to show that Steynberg’s actions operated as a fraud or deceit upon participants in violation of 7 U.S.C. § 6o(1)(B).

c. Defendants Violated 17 C.F.R. § 4.20(a)(1), (b), and (c) (2022) (Count III: Failure to Operate Commodity Pool as a Separate Legal Entity, Failure to Receive Funds in the Pool's Name, and Commingling of Pool Funds)

54. With certain specified exceptions and exemptions not applicable here, 17 C.F.R. § 4.20(a)(1) (2022) provides that a CPO must operate its pool “as an entity cognizable as a legal entity separate from that of the pool operator.” MTI, who operated the Pool at issue, maintained no distinction between itself and the Pool and failed to establish the Pool as a separate legal entity. Compl. ¶ 42; Malas Decl. III ¶¶ 9, 11, 25-26; Malas Decl. III. Ex. 1 at MTI-NFA-2-1, 5-1 to 6-2 (NFA Certs.), Ex. 2 at MTI-TSSB-68-9 (TSSB Docs.), Ex. 3 at MTI-FSCA-36-1 to 36-4, 49-1 to 49-3, 56-2 to 56-3, 65-6 to 65-9, 71-4, 78-1, 89-18 to 89-21, 89-35 to 89-36 (FSCA Docs). As a result, MTI, and Steynberg by extension as a controlling person of MTI, violated 17 C.F.R. § 4.20(a)(1) (2022).

55. In failing to establish the Pool as a separate legal entity, Defendants also violated 17 C.F.R. § 4.20(b) (2022), which requires all funds, securities, or other property received by a CPO from pool participants to be “received in the pool’s name.” As Defendants unlawfully failed to create and maintain the Pool as a separate legal entity, at no time were Bitcoin from pool participants “received in the pool’s name.” Compl. ¶ 42; Malas Decl. III ¶¶ 9, 11, 25-26; Malas Decl. III Ex. 1 at MTI-NFA-2-1, 5-1 to 6-2 (NFA Certs.), Ex. 2 at MTI-TSSB-68-9 (TSSB Docs.), Ex. 3 at MTI-FSCA-36-1 to 36-4, 49-1 to 49-3, 56-2 to 56-3, 65-6 to 65-9, 71-4, 78-1, 89-18 to 89-21, 89-35 to 89-36 (FSCA Docs.). MTI, and Steynberg by extension as a controlling person of MTI, therefore violated 17 C.F.R. § 4.20(b) (2022) when they accepted pool participants’ Bitcoin.

56. Finally, Defendants violated 17 C.F.R. § 4.20(c) (2022), which prohibits a CPO from commingling the property of the pool with the property of any other person. While acting

as a CPO, MTI, and Steynberg by extension as a controlling person of MTI, violated 17 C.F.R. § 4.20(c) (2022) by commingling pool participants' Bitcoin with Steynberg's own personal assets. Compl. ¶ 43; Malas Decl. III ¶¶ 23-25; Malas Decl. III Ex. 3 at MTI-FSCA-49-1 to 49-3, 65-6 to 65-9, 78-1, 89-18 (FSCA Docs.), Ex. 5 at MTI-CFTC-WEB-3-1, 3-3 (MTI Website).

d. Steynberg Violated 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc) and 6k(2) and 17 C.F.R. § 5.3(a)(2)(ii) (2022) (Count IV: Failure to Register as an AP of a CPO)

57. 7 U.S.C. § 1a(11) defines a CPO as, among other things, any person engaged in a business that is of the nature of a commodity pool and who solicits, accepts, or receives from others funds, securities, or property for the purpose of trading commodity interests.³ For the purposes of retail forex transactions, a CPO is defined in 17 C.F.R. § 5.1(d)(1) (2022) as “any person who operates or solicits funds, securities, or property for a pooled investment vehicle that is not an eligible contract participant as defined in section 1a(18) of the Act, and who engages in retail forex transactions.” MTI was not an ECP as defined in Section 1a(18) of the Act, 7 U.S.C. § 1a(18). During the Relevant Period, MTI acted as a retail forex CPO by soliciting, accepting, or receiving participant funds, securities, or property (in the form of Bitcoin), for the purpose of trading in commodity interests, including without limitation, forex pairs, purportedly first at FXChoice and subsequently at the alleged entity Trade300. Accordingly, the Bitcoin accepted

³ The Bitcoin Defendants received from participants were “funds” as that term is used in 7 U.S.C. § 1a(11). *See United States v. Murgio*, 209 F. Supp. 3d 698, 707-08 (S.D.N.Y. 2016) (applying ordinary meaning of “funds” from dictionary where, as here, that term was not defined in the relevant statute, and holding that “funds” means “money,” which in turn is defined as “something generally accepted as a medium of exchange, a measure of value, or a means of payment,” and concluding that “bitcoins are funds”) (citations omitted). Alternatively, the Bitcoin solicited and received by Defendants were “property” for purposes of 7 U.S.C. § 1a(11). *See* I.R.S. Notice 2014-21, at 2 (Apr. 14, 2014) (stating that for federal tax purposes “virtual currency is treated as property”).

by Defendants meets the definition of “funds, securities, or property” for a pooled investment. *See, e.g., CFTC v. Doe 1*, No. 4:18-cv-807, 2019 WL 3926809, at *14 (N.D. Tex. June 28, 2019) (default order).

58. 17 C.F.R. § 1.3 (2022) defines an AP of a CPO as any person who is associated with a CPO 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 funds, securities, or property for a participation in a commodity pool; or (ii) the supervision of any person or persons so engaged. Further, pursuant to 17 C.F.R. § 5.1(d)(2) (2022), any person associated with a CPO 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) [t]he solicitation of funds, securities, or property for a participation in a pooled vehicle; or (ii) [t]he supervision of any person or persons so engaged” is an AP of a retail forex CPO.

59. 7 U.S.C. § 6k(2) makes it unlawful for any person to be associated with a CPO as an officer or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves the solicitation of funds, securities, or property for participation in a commodity pool, unless such person is registered with the CFTC as an AP of a CPO. Similarly, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) states that a person shall not operate or solicit funds for any pooled investment vehicle in connection with forex transactions, unless registered pursuant to CFTC regulations. 17 C.F.R. § 5.3(a)(2)(ii) (2022) requires those that meet the definition of an AP of a retail forex CPO as defined by 17 C.F.R. § 5.1(d)(2) (2022) to register as such with the CFTC. Steynberg acted as an AP of MTI throughout the Relevant Period by soliciting funds or property (in the form of Bitcoin) for participation in the Pool. Accordingly, Steynberg violated 7

U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6k(2) and 17 C.F.R. § 5.3(a)(2)(ii) (2022) by, without being registered with the CFTC, soliciting Bitcoin for participation in the Pool. Compl. ¶ 48; Malas Decl. III ¶¶ 7, 8, 26e; Malas Decl. III Ex. 1 at MTI-NFA-2-1, 5-1 to 8-2 (NFA Certs.).

e. Steynberg Is Liable for MTI's Violations as a Controlling Person

60. From May 18, 2018 through at least March 2021, Steynberg was the owner, sole officer, and President of MTI and has at all times controlled MTI. Compl. ¶¶ 33, 56, 67, 76, 87; Malas Decl. III ¶¶ 7, 17, 21d; Malas Decl. III Ex. 3 at MTI-FSCA-31-58: 13-19 (FSCA Docs.), Ex. 5 at MTI-CFTC-WEB-3-6, 3-19 (MTI Website). To establish controlling person liability under 7 U.S.C. § 13c(b), the CFTC must show that the person possesses the requisite degree of control and either: (1) knowingly induced, directly or indirectly, the acts constituting the violation; or (2) failed to act in good faith. *CFTC v. Equity Fin. Grp. LLC*, 572 F.3d 150, 160-61 (3d Cir. 2009) (finding individual defendants liable as controlling persons for corporation's failure to register as commodity pool operator).

61. To establish the first element, control, a defendant must possess general control over the operation of the entity principally liable. *See, e.g., R.J. Fitzgerald*, 310 F.3d at 1334 (recognizing an individual who "exercised the ultimate choice-making power within the firm regarding its business decisions" as a controlling person). Evidence that a defendant is the sole principal, stockholder, member of the board of directors 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 CFTC 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. CFTC*, 996 F.2d 852, 860 (7th Cir. 1993) (internal quotation marks and citation omitted). The defendant does not need

to participate in or benefit from the wrongdoing; the issue is whether the defendant has the power to address the illegal conduct. *Id.*

62. In addition to control, the CFTC must show the controlling person knowingly induced, directly or indirectly, the acts constituting the violation, or did not act in good faith. To show knowing inducement, the CFTC must show that a defendant had actual or constructive knowledge of the core activities that constituted the violation of the Act or the Regulations, and allowed the activities to continue. *R.J. Fitzgerald*, 310 F.3d at 1334; *Spiegel*, 1988 WL 232212, at *7. To show lack of good faith, the CFTC must show that a defendant failed to maintain a “reasonably adequate system of internal supervision and control” or did not oversee the system “with any reasonable diligence.” *Monieson*, 996 F.2d at 860.

63. As to Steynberg’s general and specific control, he is the founder, CEO, and shareholder of MTI and directed every aspect of the fraudulent scheme. Compl. ¶ 21; Malas Decl. III ¶ 7. He directly made omissions and misrepresentations to participants and misappropriated participants’ funds and controlled the E-Wallets to which participants’ Bitcoin were sent. Compl. ¶¶ 6, 32, 33; Malas Decl. III ¶¶ 23-26, 30, 34, 41c; Malas Decl. III Ex. 3 at MTI-FSCA-31-30, 36-1 to 36-4, 49-3, 78-1 to 78-3, 89-3, 89-15, 89-18, 94-27 (FSCA Docs.). Thus, Steynberg had general control over MTI and specific control over the misconduct upon which the primary violations are predicated. In addition, Steynberg knowingly induced the violations because he individually had knowledge of the wrongdoing. *See Spiegel*, 1988 WL 232212, at *7 (“[W]e reject the view that a controlling person must know that the acts at issue amount to a violation in order to be held to have ‘knowingly’ induced the acts constituting the violation. . . . [I]f the controlling person knowingly induces acts that amount to a violation, he will not escape liability merely because he acted in good faith.”). Thus, Steynberg is liable as a

controlling person for MTI's violations of the Act and Regulations described in this Motion.

III. RELIEF GRANTED

IT IS HEREBY ORDERED THAT:

A. Permanent Injunction

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

- a. Cheating or defrauding, or attempting to cheat or defraud, other persons; issuing or causing to be issued false reports; willfully making or causing to be made to other persons any false report or statement or willfully to enter or cause to be entered for other persons any false record; and, willfully deceiving or attempting to deceive other persons 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) (2022);
- b. While acting as a CPO, using the mails or any means or instrumentalities of interstate commerce, directly or indirectly to employ any device, scheme, or artifice to defraud any participant or prospective participant, or to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any participant or prospective participant, in violation of 7 U.S.C. § 6o(1)(A)-(B);
- c. Failing to operate a commodity pool as an entity cognizable as a legal entity separate from that of the commodity pool operator in violation of 17 C.F.R. § 4.20(a)(1) (2022);
- d. Receiving funds from existing or prospective participants for the purchase of an interest in a commodity pool without receiving the same in the commodity pool's name in violation of 17 C.F.R. § 4.20(b) (2022);
- e. Commingling the property of any commodity pool that he operates or that he intends to operate with the property of any other person in violation of 17 C.F.R. § 4.20(c) (2022);
- f. Acting as an associated person of a CPO without registering with the CFTC as an AP of a CPO in violation of 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6k(2), and 17 C.F.R. § 5.3(a)(2)(ii) (2022);

65. Defendant is also permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Trading on or subject to the rules of any registered entity (as that term is defined by 7 U.S.C. § 1a(40));
- b. Entering into any transactions involving “commodity interests” (as that term is defined in 17 C.F.R. § 1.3 (2022)), for Defendant’s own personal accounts or for any account in which he has a direct or indirect interest;
- c. Having any commodity interests traded on his behalf;
- d. 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;
- e. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling of any commodity interests;
- f. Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC except as provided for in Regulation 17 C.F.R. § 4.14(a)(9) (2022); and
- g. Acting as a principal (as that term is defined in 17 C.F.R. § 3.1(a) (2022)), agent, or any other officer or employee of any person (as that term is defined in 7 U.S.C. § 1a(38)), registered, exempted from registration, or required to be registered with the CFTC except as provided for in 17 C.F.R. § 4.14(a)(9) (2022).

B. Restitution

66. 7 U.S.C. § 13a-1(d)(3)(A) authorizes the CFTC to seek, and the Court to order, “restitution to persons who have sustained losses proximately caused by [a] violation [of the Act or Regulations] (in the amount of such losses).” Restitution exists to restore the status quo and make the injured party whole. *Porter v. Warner Holding Co.*, 328 U.S. 395, 402 (1946) (equitable restitution consists of “restoring the status quo and ordering the return of that which rightfully belongs to the purchaser or tenant”). Accordingly, courts calculate restitution “as the difference between what Defendants obtained and the amount customers have already received

back.” *CFTC v. Ross*, No. 1:09-cv-5443, 2014 WL 6704572, at *3 (N.D. Ill. Nov. 26, 2014); *see also CFTC v. Driver*, 877 F. Supp. 2d 968, 981 (C.D. Cal. 2012) (finding that restitution exists to “restore the status quo” and reflects “the difference between what defendants obtained and the amount customers received back”). Where, as here, a defendant engages in systematic and pervasive fraud, all funds obtained by the illegal enterprise may be included in the calculation of restitution. *See CFTC v. McDonnell*, 332 F. Supp. 3d 641, 726-27 (E.D.N.Y. 2018) (holding that in cases of pervasive fraud under the Act, the appropriate calculation of restitution includes all customer losses even where only a subset of those customers testify to the losses they sustained on the grounds that reliance on the defendant’s fraud is presumed).

67. Steynberg’s illegal conduct, as detailed herein, proximately caused participants to incur net losses totaling not less than \$1,733,838,372. Accordingly, Steynberg shall pay restitution in the amount of \$1,733,838,372.

68. If the Restitution Obligation is 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.

69. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendants’ participants, the Court appoints the National Futures Association (“NFA”) as Monitor (“Monitor”). The Monitor shall receive restitution payments from Defendant 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.

70. Defendants shall make Restitution Obligation payments, and any post-judgment interest payments, under this Order to the Monitor in the name “Cornelius Steynberg 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 and the name and docket number of this proceeding. The paying Defendant 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.

71. 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’ participants identified by the CFTC or may defer distribution until such time as the Monitor deems appropriate.

72. Defendant shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendants’ participants to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Defendant 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 Obligation.

73. 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.

74. The amounts payable to each participant 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.

75. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each participant 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 Defendant to ensure continued compliance with any provision of this Order and to hold Defendant in contempt for any violations of any provision of this Order.

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

C. Civil Monetary Penalty

77. 7 U.S.C. § 13a-1(d)(1)(A) authorizes the imposition of a civil monetary penalty ("CMP") equal to the higher of triple a defendant's monetary gain from each violation of the Act, or \$214,514 per violation.⁴ "The court should consider a variety of factors in assessing a CMP, and has broad discretion in fashioning an appropriate remedy that is 'rationally related to the offense charged or the need for deterrence.'" *CFTC v. Yorkshire Grp., Inc.*, No. 1:13-cv-

⁴ Pursuant to the associated regulation, 17 C.F.R. § 143.8(b)(1) (2022), the allowable inflation-adjusted civil monetary penalty is \$214,514 per violation of the Act (effective Jan. 15, 2023) for non-manipulation claims brought in federal injunctive actions under 7 U.S.C. § 13a-1.

5323, 2016 WL 8256380, at *6 (E.D.N.Y. Aug. 19, 2016) (quoting *CFTC v. Levy*, 541 F.3d 1102, 1112 (11th Cir. 2008)).

78. Courts consider numerous factors in determining an appropriate CMP under the Act, including “(1) whether Defendants’ illegal acts violated core provisions of the Act; (2) whether Defendants acted with scienter; (3) the consequences resulting from Defendants’ violations; (4) the financial benefits to Defendants; and (5) the harm to Defendants’ customers.” *CFTC v. Cifuentes*, No. 2:16-cv-6167, 2018 WL 1904196, at *11 (D.N.J. Apr. 20, 2018). Courts routinely award significant CMPs in cases involving fraud. *See, e.g., CFTC v. Wright*, No. 1:17-cv-4722, 2018 WL 6437055, at *5 (S.D.N.Y. Dec. 7, 2018) (entering default judgment and ordering a CMP of “treble damages” where defendant “intentionally implemented over a period of years an extensive artifice to obtain clients’ money and divert those funds to personal and other unauthorized purposes instead of investing these funds”).

79. Acting intentionally, Steynberg committed repeated violations of the core antifraud provisions of the Act that caused significant monetary losses to participants. The multi-year scheme included misrepresentations and omissions, the fabrication and issuance of fraudulent account statements showing fictional trades, and misappropriation of participants’ funds for unauthorized purposes.

80. Given this conduct, Steynberg shall pay a civil monetary penalty in the amount of \$1,733,838,372 (“CMP Obligation”), which is equal to one time the funds Defendants fraudulently solicited and obtained.

81. Defendant shall pay his CMP Obligation and any post-judgment interest, by electronic funds transfer, 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, then the payment shall be made payable to the CFTC and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-amc-ar-cftc@faa.gov

If payment by electronic funds transfer is chosen, Defendant shall contact Tonia King or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendant shall accompany payment of the CMP Obligation with a cover letter that identifies Defendant and the name and docket number of this proceeding. Defendant 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, N.W., Washington, D.C. 20581.

D. Miscellaneous Provisions

82. Partial Satisfaction: Acceptance by the CFTC of any partial payment of Defendant's CMP Obligation 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.

83. Notice: All notices required to be given by any provision in this Order shall be sent certified mail, return receipt requested, as follows:

Notice to Commission:
Ian McGinley
Director, Division of Enforcement
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

All such notices to the CFTC shall reference the name and docket number of this action.

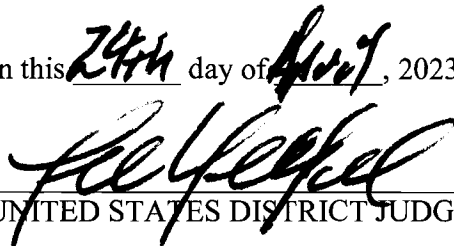
84. **Invalidation:** If any provision of this Order or if the application of any provision or circumstance is held invalid, then the remainder of this Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

85. **Continuing Jurisdiction of this Court:** This Court shall retain jurisdiction of this action to ensure compliance with this Order and for all other purposes related to this action, including any motion by Defendant to modify or for relief from the terms of this Order.

86. **Injunctive and Equitable Relief Provisions:** The injunctive and equitable relief provisions of this Order shall be binding upon Defendant, upon any person under his authority or control, and upon any person who receives actual notice of this Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Defendant.

THERE BEING NO JUST REASON FOR DELAY, the Clerk of the Court is hereby ordered to enter this Order for Final Judgment by Default, Permanent Injunction, Civil Monetary Penalty, and Other Statutory and Equitable Relief Against Defendant Steynberg forthwith and without further notice.

IT IS SO ORDERED, at Austin, Texas on this 24th day of April, 2023.


UNITED STATES DISTRICT JUDGE