

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

Case No. 8:19-cv-00886-VMC-SPF

OASIS INTERNATIONAL GROUP,
LIMITED, ET AL.,

Defendants,

and

MAINSTREAM FUND SERVICES,
INC., ET AL.,

Relief Defendants.

JOINT MOTION REQUESTING A TRACK THREE CASE DESIGNATION

I. INTRODUCTION

On June 3, 2019, this Court entered an Endorsed Order, which directed counsel to meet and confer for the purpose of preparing and filing a completed Case Management Report. Doc. #93. The Endorsed Order referenced Local Rule 3.05(c)(2)(E) and its specification that Track Two Cases should include a trial timeline “within one year after the filing of the complaint.” *Id.* The Endorsed Order stated that to accomplish this goal, the Court believed six to eight months was a sufficient period of time to conduct discovery. *Id.* The Endorsed Order also stated that if “the parties believe that more time than eight months will be needed to conduct discovery, the parties should provide the Court with a detailed

explanation as to why additional time is needed and a timeline for the discovery that is planned.” *Id.*

This Joint Motion is the parties’ detailed explanation as to why additional time for discovery is needed; namely, because the parties believe this is a Track Three Case instead of a Track Two Case. The parties’ Case Management Report is attached to this joint motion as **Exhibit 1**. Exhibit 1 memorializes the parties’ good faith attempt to comply with the Endorsed Order. Exhibit 1 includes the parties’ agreed dates for deadlines for this case (as a Track Two Case and, alternatively, as a Track Three Case), as well as other issues raised and discussed by the parties during the conference.

II. STATEMENT OF THE RELIEF REQUESTED

Plaintiff Commodity Futures Trading Commission (“CFTC” or “Plaintiff”), Defendants Michael J. DaCorta (“DaCorta”)¹, Raymond P. Montie, III (“Montie”), Francisco “Frank” L. Duran (“Duran”)², John J. Haas (“Haas”) and Satellite Holdings Company (“Satellite Holdings”), and Relief Defendant Mainstream Fund Services, Inc. (“Mainstream Fund”) (collectively, “the parties”) jointly move this Court for an order designating this as a Track Three Case, as well as any other relief related to or required for this change in case designation.

III. BASIS FOR THE REQUEST

On June 6, 2019, counsel for the parties to this Joint Motion met and conferred by

¹ Mr. DaCorta’s attorneys participated in the case management conference on June 6, 2019. The next day, DaCorta’s attorneys moved the Court for leave to withdraw from their representation of DaCorta. Doc. ##102 and 104. Leave has not yet been granted. Doc. ##106 and 107. DaCorta’s attorneys renewed their request today. Doc. ##115 and 116.

² Mr. Duran is presently unrepresented and in default. Doc. #70. Today, a Florida lawyer contacted the undersigned counsel for the CFTC and advised that Mr. Duran was in the process of retaining him to represent him in this matter.

telephone for the purpose of preparing and filing a completed Case Management Report. During that conference, the parties determined that they believe that more time than that contemplated in Track Two Cases will be needed to complete discovery. Furthermore, based upon the description of the three types of cases in Local Rule 3.05(b), the parties also agreed that this case should be designated as a Track Three Case.

IV. MEMORANDUM IN SUPPORT OF THE REQUEST

A. Track Three Cases

Local Rule 3.05 governs case management in this Court. Local Rule 3.05(b)(3) describes Track Three Cases as those which involve:

class action or anti-trust claims, securities litigation, mass disaster or other complex tort cases, or those actions representing factual or legal issues arising from the presence of multiple parties or multiple claims portending extensive discovery procedures or numerous legal issues such that the management techniques recommended in the current edition of the Manual for Complex Litigation should be considered and applied as appropriate to the circumstances of the case.

All Track Three Cases will be tried within three years after filing the complaint and “most” Track Three Cases “will be tried within two (2) years after the filing of the complaint or on an acutely accelerated schedule if the public interest requires.” Local Rule 3.05(c)(3)(D).

B. The Complaint Supports the Parties’ Joint Request for a Track Three Case Designation

A review of the CFTC’s Complaint supports the parties’ joint request for a Track Three Case designation. On April 15, 2019, the CFTC initiated this case by filing a forty-six page, five-count Complaint against eight defendants and nine relief defendants, for a total of

eighteen parties.³ Doc. #1. On June 12, 2019, the CFTC filed its First Amended Complaint, a fifty-seven page, five-count pleading that largely mirrors the Complaint and names all of the same parties. Doc. #110. Thus, on its face, it appears that this case is an action representing factual or legal issues “arising from the presence of multiple parties and multiple claims,” as contemplated by Local Rule 3.05(b)(3) for designation of Track Three Cases.

The substance of the Complaint also supports the parties’ request. The Complaint alleges violations of certain anti-fraud and registration provisions of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1 et seq. (2012) and Commission Regulations (“Regulations”), 17 C.F.R. §§ 1 et seq. (2018).⁴ As alleged in the Complaint, Defendants’ fraudulent investment scheme was complex because it was being orchestrated by at least five individuals (in three different states) and three entities (in two different states and one foreign country), and concerned a pooled investment involving hundreds of individuals spread across the United States (“pool participants”) who thought they were investing in retail foreign currency contracts or “forex.” Further complicating Defendants’ fraud was the fact that pool participants’ money flowed through dozens of bank accounts held by both individuals and entities (mostly shell companies, eight of which were named as relief defendants) and, sometimes, into a foreign forex trading account. *See also* Doc. #4-1. As alleged, Defendants’ fraudulent investment scheme was also lengthy, beginning sometime in 2011, with a five-year charging period in the Complaint spanning mid-April 2014 to the time of filing. This is a complex case that will involve overlapping, competing and/or conflicting

³ Three of the Defendants (Oasis International Group, Ltd., Oasis Management, LLC, and Francisco “Frank” L. Duran) and eight of the nine Relief Defendants have defaulted, which decreases this number. However, as of today’s filing, there are still several parties actively participating in this case.

⁴ Cases brought by the CFTC under the Act are akin to cases brought by the Securities and Exchange Commission.

defenses from each of the respective Defendants and it should be designated as a Track Three Case to account for these complexities.

C. The Procedural Posture of this Case Also Supports the Parties' Joint Request for a Track Three Case Designation

A review of the procedural posture of this case also supports the parties' joint request for a Track Three Case designation. On April 24, 2019—prior to the appearances of any of the undersigned counsel for the Defendants or the Relief Defendant—this Court designated this case as a Track Two Case. Doc. #26. Although counsel for the CFTC and counsel for the Defendants and the Relief Defendant have communicated among and between themselves (*see*, for example, Doc. ##33, 41, 46, 57, 61, 64, 65 and 88), until their June 6, 2019 conference, counsel for all of the parties actively participating in this litigation have not had occasion to gather as a group and discuss the factual and legal issues presented by the Complaint.

1. Numerous Legal Issues

Even prior to the June 6 conference, the procedural posture of this case demonstrates that there has been activity “portending numerous legal issues.” Despite several parties' consents to entry of preliminary injunctions against them (Doc. ##43 and 85), the issue of the CFTC's request for a preliminary injunction (Doc. #4) as to Defendants Montie, Haas, and Satellite Holdings is still pending before this Court because those three defendants moved to continue the preliminary injunction hearing, which is currently set for July 1, 2019. Doc. ##57 and 79.

In addition, on May 22, 2019, Montie filed a Fed. R. Civ. P. 12(b)(6) Motion to Dismiss the Complaint. Doc. #58. In his Motion to Dismiss, Montie argued, among other

things, that the fraud counts fail as to him because the allegations in the Complaint fail to meet the particularity requirements of Fed. R. Civ. P. 9(b). On June 12, 2019, the CFTC filed its First Amended Complaint. Doc. # 110. The Court subsequently ruled that Montie's motion was moot. Doc. #111. However, Montie denies the allegations in the Complaint and intends to deny the allegations in the First Amended Complaint. As a result, Montie is adverse to one or more of his co-defendants, including DaCorta and Anile. Haas takes a similar position to Montie and states that, as it concerns him, this matter is not a simple one party versus another party type of case. Instead, Haas anticipates that with regard to certain issues, he will be adverse to the CFTC, the Receiver, and to some defendants, including Defendants Oasis International Group, Limited, Oasis Management, LLC, DaCorta, and Anile. Montie's and Haas' respective positions portend "numerous legal issues" that further complicate this case and discovery.

Furthermore, to date, none of the Defendants or Relief Defendant Mainstream Fund has filed answers to the Complaint. Defendants DaCorta, Haas, and Satellite Holdings have moved separately for and received extensions of time until June 21, 2019 to answer or otherwise respond to the Complaint. Doc. ##67 and 68. The parties who have not already defaulted have until June 26 to answer or otherwise respond to the First Amended Complaint. Doc. #110. Thus, there may be "numerous legal issues" forthcoming, for example, as they relate to overlapping, competing and/or conflicting defenses among and between the Defendants. Given these legal issues—as well as other, as of yet unknown, legal issues—the parties require more time to effectively plan for and execute a reasonable discovery plan that falls within the time frame contemplated for a Track Three Case.

2. Extensive Discovery Procedures

Since April 15, 2019, there has also been activity in this case that “portend[s] extensive discovery procedures.” For example, in addition to the parties to this lawsuit, the Court-appointed receiver, Burton W. Wiand (“Receiver”)⁵, is authorized to issue subpoenas or letters rogatory to compel testimony of persons or production of records, consistent with the Federal Rules of Civil Procedure and applicable Local Rules, except for the provisions of Fed. R. Civ. P. 26(d)(1), concerning any subject matter within his powers and duties. Doc. #44. Thus, in addition to the discovery being conducted and exchanged among and between the parties, this case also allows for the Receiver to participate in the discovery process.

The Receiver moved this Court to approve his engagement of legal, accounting, and other professionals. Doc. #87. The Court granted the Receiver’s motion. Doc. ##98 and 99. The Receiver sought assistance from these professionals because the receivership in this case “involves complex facts and circumstances, including at least 700 investors; foreign transactions and entities; non-cash assets like real estate, luxury cars, and precious metals; and interests in operating businesses.” Doc. #87. One such professional retained by the Receiver is E-Hounds, Inc., which is a computer forensics firm, from which the Receiver seeks assistance “to image computers and other electronic devices (or to process images created by law enforcement)” *Id.* at 5. This indicates that there will be an exchange of extensive ESI (either via discovery or per potential stipulations with the Receiver to access E-Hounds), which adds to the complexity of the discovery procedures that need to be considered and outlined in this case. As further demonstrated by Relief Defendant

⁵ The Receiver’s counsel, Jared Perez, participated in the June 6, 2019 teleconference.

Mainstream's recent filing, which stated it had already provided the Receiver with almost 20,000 documents, the documents exchanged among and between the parties in this case will be voluminous. Doc. #97 at 2, ¶C. *See also* the Receiver's First Interim Report, which states that, as of June 14, 2019, the Receiver has already collected "hundreds of thousands of pages of documents from at least 71 nonparties, including employees, banks, credit card companies, accountants, and lawyers." Doc. #113 at 2.

Finally, DaCorta's counsel filed his Notice of Pendency of Other Actions, citing, *U.S. v. Michael DaCorta*, 8:19-MJ-01638-CPT, M.D. Fla. and *U.S. v. 13318 Lost Key Place, Lakewood Ranch, Florida, et al.*, 8:19-CV-00908-T-02AEP, M.D. Fla. Doc. #60. These related actions (as well as any other potential related criminal actions) may result in a stay of this case, which further complicates discovery. Additionally, on or about April 18, 2019, and contemporaneously with personal service of process on some of the Defendants, the FBI executed search warrants at DaCorta's, Anile's, and Duran's homes and at Oasis's offices in Florida. *See* Doc. ##19, 20, 22, and 113. As indicated by the Receiver's request to engage E-Hounds, Inc., this resulted in ESI, because "images were created by law enforcement." Doc. #87 at 5. This implicates potential Fifth Amendment legal issues and further complicates the discovery procedures for which the parties are attempting to plan using the current Track Two Case designation and guidelines. A Track Three Case designation will allow the parties to properly account for and plan for the many complexities presented by this case.

V. CONCLUSION

WHEREFORE, for all of the reasons outlined above, the CFTC, Defendants Michael

J. DaCorta, Raymond P. Montie, III, Francisco “Frank” L. Duran, John J. Haas and Satellite Holdings Company, and Relief Defendant Mainstream Fund Services, Inc. jointly move this Court for an order designating this as a Track Three Case, which will allow for a discovery period and a trial date more appropriate to the complex nature of this case.

Dated: June 17, 2019

Respectfully submitted,

**COMMODITY FUTURES TRADING
COMMISSION**

By: /s/ Jennifer J. Chapin
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LOCAL RULE 3.01(G) CERTIFICATE

This is a joint motion to which there is no opposition. Counsel for Defendant Joseph S. Anile, II (Gerard Marrone), who does not join in this motion, advised counsel for the CFTC (Jennifer Chapin) by electronic mail that he is not opposed to it. The parties to this motion have authorized counsel for the CFTC (Jennifer Chapin) to file it on their behalf.

CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2019, I filed a copy of the foregoing with the Clerk of the Court via the CM/ECF system, which served all parties of record who are equipped to receive service of documents via the CM/ECF system.

I hereby certify that on June 17, 2019, I provided service of the foregoing via electronic mail to:

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COUNSEL FOR DEFENDANT JOSEPH S. ANILE, II

I hereby certify that on June 17, 2019, I provided service of the foregoing via electronic mail to the following unrepresented party:

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