UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

COMMODITY FUTURES TRADING COMMISSION, Plaintiff, v. OASIS INTERNATIONAL GROUP LIMITED, et al., Defendants; and MAINSTREAM FUND SERVICES, INC, et al., Relief Defendants.	Case No. 8:19-CV-886-T33-SPF

DEFENDANTS JOHN J. HAAS' AND SATELLITE HOLDINGS COMPANY'S RESPONSE AND OPPOSITION TO INTERVENOR UNITED STATES' MOTION FOR TEMPORARY STAY OF ALL PROCEEDINGS, INCLUDING STAYING ENTRY OF A CASE MANAGEMENT AND SCHEDULING ORDER TO PREVENT HARM TO FEDERAL CRIMINAL INVESTIGATION, AND MEMORANDUM OF LAW

COME NOW, the defendants, John J. Haas [hereinafter "Mr. Haas"] and Satellite Holdings Company [hereinafter "SHC"] [hereinafter, collectively, "Defendants"], by and through the undersigned counsel, and hereby respond to and oppose Intervenor United States' Motion for Temporary Stay of all Proceedings, including Staying Entry of a Case Management and Scheduling Order, to Prevent Harm to Federal Criminal Investigation [Dkt. 149] [hereinafter "Government's Motion to Stay"]. In support thereof, Defendants state as follows:

I. PROCEDURAL HISTORY

On April 15, 2019, the CFTC filed their original Complaint with the Court. [Dkt. 1]. The Complaint alleged, inter alia, that Michael J. DaCorta, Joseph S. Anile, II, and others used entities, including Oasis International Group [hereinafter "OIG"] and Oasis Management, LLC [hereinafter "OM"], to perpetuate a Ponzi scheme against approximately 700 investors and/or lenders. In sum, defendants DaCorta and Anile conned Mr. Haas and others to "loan" money to various entities, all of which used variations of the name Oasis. These entities would purportedly invest the money in foreign currency ("forex") trading and were guaranteed to make a profit. Mr. Haas was not an employee of the Oasis companies. Mr. Haas was the owner and director of a separate entity, SHC. As set forth below, Mr. Haas had no knowledge or involvement with how defendants DaCorta and Anile invested the money once it was loaned to the Oasis companies. Moreover, Mr. Haas did not engage in any fraud or violations of the law.

On April 15, 2019, the CFTC filed an Emergency *Ex Parte* Motion for a Statutory Restraining Order, Preliminary Injunction, and Other Equitable Relief and Memorandum in Support. [Dkt. 4].

On April 15, 2019, the Court granted the CFTC's Motion for a Statutory Restraining Order [hereinafter "SRO"], temporarily froze the Defendants' assets, and appointed Burton W. Wiand [hereinafter "Mr. Wiand"] to be the Temporary Receiver over the Defendants. [Dkt. 7].

On April 23, 2019, Mr. Haas was served with a copy of the Order granting the CFTC's Emergency Motion for the SRO.

On June 12, 2019, the CFTC filed the First Amended Complaint. [Dkt. 110].

On June 24, 2019, the Defendants filed a Response in Opposition to the CFTC's Motion for Preliminary Injunction, along with supporting exhibits, including sworn affidavits from witnesses. [Dkt. 143].

On June 26, 2019, the United States of America filed an Application to Intervene and filed the Government's Motion to Stay all civil proceedings, including staying imminently occurring discovery as well as staying the entry of a Case Management and Scheduling Order for a period of one-hundred eighty (180) days. [Dkts. 148, 149]. Notably, the Government made clear that the requested stay does not seek to prohibit the Receiver from gathering assets and performing other functions tailored to gathering assets with which to compensate victims. Id., at p. 23.

The Court has scheduled oral arguments on the Government's Motion to Stay for July 2, 2019. [Dkt. 154]. The CFTC's Motion for a Preliminary Injunction is currently scheduled to be heard by the Court on July 12, 2019. [Dkt. 152].

The Defendants oppose the Government's Motion to Stay because the Defendants would be severely prejudiced if the civil proceedings, including discovery, are stayed while the current asset freeze in the SRO and the proposed preliminary injunction remain in place as to Mr. Haas. It would be extremely unfair to the Defendants to stay the civil proceedings and prohibit the Defendants from engaging in discovery, while at the same time permitting the receivership, the SRO, and the preliminary injunction requested by the CFTC to remain in place during the stay. This Court maintains continuing authority to revise any preliminary injunction imposed, based on newly discovered facts and evidence. The Defendants must not be prohibited from conducting discovery, which is necessary so that the Defendants can develop facts demonstrating that Mr. Haas was wrongly named as a defendant and included

in the asset freeze. In the alternative, dissolving the receivership and the asset freeze, or otherwise exempting Mr. Haas from the asset freeze, would balance the needs of both the Defendants and the Government, and would greatly serve the interests of justice in this case. Therefore, the Defendants hereby request that this Court deny the Government's Motion to Stay, or, in the alternative, grant the Government's Motion to Stay but dissolve the receivership and asset freeze as it applies to Mr. Haas.

II. STATEMENT OF FACTS[1]

On April 18, 2019, Special Agent Shawn Batsch, of the Internal Revenue Service-Criminal Investigations, and Special Agent Ric Volp of the Federal Bureau of Investigation [hereinafter "FBI"], interviewed defendant DaCorta. The statements made by defendant DaCorta during this interview were memorialized in an official government record called a Memorandum of Interview. In sum, defendant DaCorta fully confessed to executing a Ponzi scheme involving the Oasis investors. To perpetrate the fraud, defendant DaCorta stated that he and others maintained a web portal, called "the back office," which investors, including Mr. Haas, used to view account balances. The back office did not incorporate trading losses. Defendant DaCorta admitted that the information presented to an investor viewing the back office was "misleading because each investor believes they are earning money and the company is earning money." In addition to lying to investors, defendant DaCorta told investigators that he hid the fraud from certain OIG employees. In addition, defendant DaCorta stated the following concerning Mr. Haas:

[1] These Statement of Facts are taken from the Statement of Facts and supporting exhibits in the Defendants' Response in Opposition to the CFTC's Motion for Preliminary Injunction. [Dkt. 143]. The Defendants hereby incorporate by reference those Statement of Facts and supporting exhibits as if fully set forth in this response and memorandum of law.

> John Haas brings IRA money to Oasis. He lives in New York. Haas does not know about the FOREX losses.

Defendant DaCorta also ended his interview by reaffirming that the investigators needed to leave Mr. Haas and others "out of this as they had nothing to do with the fraud."

Prior to 2011, Mr. Haas was an independent consultant for Ambit Energy [hereinafter "Ambit"], which is a legitimate and successful business that provides electricity and natural gas services in deregulated markets across the United States, primarily marketed through a direct sales channel of more than 250,000 independent consultants. Through Ambit, Mr. Haas and other independent consultants promoted and offered Ambit's services, including saving customers money on their gas and electric bills by switching over to Ambit. The independent consultants also recruited new independent consultants. Ambit is completely unrelated and separate from any of the businesses discussed in the CFTC's Complaints, including OM, OIG, and SHC.

Mr. Haas was never an employee of OM or OIG, which were the two Oasis businesses through which the alleged fraud was executed during the relevant time period. Instead, Mr. Haas was a client of the Oasis companies who invested a substantial amount of his own personal savings into OIG. In addition, Mr. Haas, through his own company, SHC, loaned money to OIG. The funds that SHC loaned OIG came from SHC's lenders and Mr. Haas paid these lenders an interest rate on the money they loaned him. SHC's business office was located at in New York and SHC did not share the same office and employees with the Oasis companies.

Defendant DaCorta made it very clear to OIG employees, such as Deborah Cheslow, that Mr. Haas was nothing more than a client and a Loan Service Agent with OIG. Defendant

DaCorta also told Deborah Cheslow that Mr. Haas had no operational authority at OIG and no decision making authority within OIG. The allegations raised by the CFTC in their Complaints and the Motion for Preliminary Injunction fail to establish that Mr. Haas knew or should have known that statements made to Oasis investors or lenders were false or fraudulent. During conference calls or meetings with potential lenders, any substantive information concerning how OIG invested money and made returns on its investments was communicated to the potential lenders by defendant DaCorta. Defendant DaCorta also presented himself as the individual who controlled both OM and OIG, and the person solely responsible for making all investment decisions with the money that was invested with the two companies.

Mr. Haas was not a trader for OIG or OM and made no investment decisions for the companies. As such, Mr. Haas did not have access to the trading information for OIG and had no knowledge of defendant DaCorta's trading losses. Stated another way, like the other 700 victims of defendant DaCorta's well executed fraud, Mr. Haas was in no position to know what the Oasis companies were ultimately doing with the money that was being given to the companies to invest. In contrast to the CFTC's assertions, Mr. Haas certainly had no knowledge that defendant DaCorta was "misappropriating pool funds to make Ponzi payments, to purchase personal residences and cars, to charter private jets, and to fund other non-forex related business and personal expenses." [Dkt. 4, p. 33].

Mr. Haas also had no involvement whatsoever in the creation of the account statements accessible in the "back office" section of the Oasis website. According to the CFTC, these account statements played a critical role in defendant DaCorta's Ponzi scheme because the statements led investors to believe that the money they had invested with the

Oasis companies was growing at the rate they had been promised, when in fact, Oasis was losing money. [Dkt. 110, at pp. 34-35]. The CFTC characterized these account statements as a "complete fiction." Id., at p. 35. Mr. Haas had nothing to do with the creation of this "complete fiction," and, like the other victims, was completely fooled by what he saw in his own account statements.

Investors with Oasis, such as Deborah Cheslow and Jason McKee, based their decision to invest on defendant DaCorta's representations that he was an experienced trader and on representations that defendant Anile was a licensed attorney advising the companies on compliance issues. Mr. Haas believed these same things as well.

The CFTC has alleged that Mr. Haas, as one of the defendants, omitted to tell investors that defendant DaCorta was "permanently banned from registering with the Commission in 2008 and prohibited from soliciting U.S. residents to trade forex and from trading forex for U.S. residents in any capacity." [Dkt. 4, at p. 4]. Investors, such as Jason McKee and Michele Utter, conducted online searches of defendant DaCorta but failed to find any publicly available information indicating that he had been permanently banned from trading activities by the CFTC or any other regulatory body. Because no public information on defendant DaCorta's CFTC ban was available, Mr. Haas was also unaware of this ban. Thus, Mr. Haas did not omit to provide this information to investors because he only became aware of it once the CFTC filed this lawsuit.

Mr. Haas was always transparent in his dealings with Deborah Cheslow, who was on of SHC's lenders. Moreover, Mr. Haas was known as a person of integrity who conducted his business honestly and ethically. Like the other 700 victims in this case, Mr. Haas believed in defendant DaCorta and thought that OIG was a good investment up until the moment he

learned of the CFTC's action on April 23, 2019. Notably, Mr. Haas invested a significant amount of his own personal money with OIG. Mr. Haas's close friends and family also invested their money with defendant DaCorta. These actions are wholly inconsistent with someone who was knowingly participating in a Ponzi scheme. In stark contrast, defendants DaCorta and Anile appear to have invested none of their own money with OIG.

In sum, Mr. Haas is a victim of the fraud that defendants DaCorta, Anile, and others perpetrated. Mr. Haas' greatest regret is that he trusted defendants DaCorta and Anile with his future and his reputation. As noted, Mr. Haas invested his own money in Oasis and introduced his family and friends to the Oasis investments. Because of the "guilt by association" assumptions made by others, including the CFTC, Mr. Haas' good reputation was been ruined by defendant DaCorta, a con man.

Instead of treating Mr. Haas like the legitimate victim he is, the CFTC has unjustly accused him of engaging in serious violations of the Commodity Exchange Act and CFTC regulations. Mr. Haas wants to clear his good name as soon as possible by proving that the CFTC's allegations against him are wrong. The only way for Mr. Haas to do that is through the use of civil discovery. Moreover, Mr. Haas will face almost certain financial ruin if the asset freeze currently in place continues while the case is stayed so that the Government can conduct its criminal investigation. Further, it would be extremely unfair and inequitable to allow the Receiver to continue exercising authority in this matter, while Mr. Haas has no ability to engage in his own discovery so that he can prove to the Receiver, the CFTC, and this Court that he is a victim and not a perpetrator of the alleged fraud.

III. MEMORANDUM OF LAW

A. The Government Has Not Met Its Burden To Show A Stay Is Justified

"A court must stay a civil proceeding pending resolution of a related criminal prosecution **only when 'special circumstances' so require in the 'interest of justice.'"** United States v. Lot 5, Fox Grove, Alachua County, Fla., 23 F. 3d 359, 364 (11th Cir. 1994) (civil forfeiture context) (citing United States v. Kordel, 397 U.S. 1, 12 & n. 27 (1970)). In determining whether special circumstances exist and a stay should be granted, the district court must consider the competing interests of the parties and balance any prejudice resulting from such a stay. United States v. Pinnacle Quest Int'l, No. 3:08–cv–136, 2008 WL 4274498 at * 2 (N.D. Fla. Sept. 11, 2008); SEC v. Jones, No. 1:04-civ-4385, 2005 WL 2837462 at *1 (S.D.N.Y. Oct. 28, 2005); SEC v. Nacchio, No. 1:05-cv-480, 2005 WL 1799372 at *5 (D. Colo. July 28, 2005).

The Court of Appeals for the Ninth Circuit and district courts within the Eleventh Circuit have agreed on the factors that the Court should consider in deciding whether special circumstances warrant a stay in the interests of justice. Pinnacle Quest, 2008 WL 4274498 at *2. These factors include:

> (1) the extent to which the defendant's Fifth Amendment rights are implicated; (2) the interest of the non-movants in proceeding expeditiously with the litigation or any particular aspect of it, and the potential prejudice to them as a result of delay; (3) the burden which any particular aspect of the proceedings may impose on movants; (4) the convenience of the court in the management of its cases and the efficient use of judicial resources; (5) the interests of persons not parties to the civil litigation; (6) the interests of the public in the pending civil and criminal litigation; and (7) the extent to which issues in the criminal and civil cases overlap.

Id. (citing Keating v. Office of Thrift Supervision, 45 F. 3d 322, 324–25 (9th Cir. 1995)); see also Scheuerman v. City of Huntsville, AL, 373 F. Supp. 2d 1251, 1257 (N.D. Ala. 2005)

(noting some of same factors); SEC v. Healthsouth Corp., 261 F. Supp. 2d 1298, 1326 (N.D. Ala. 2003) (same).

"A balancing of these factors must be done on a case by case basis with the goal being to avoid prejudice." Id. (citing Volmar Distributors, Inc. v. New York Post Co., 152 F.R.D. 36, 39 (S.D.N.Y. 1993)); see also Federal Trade Commission v. Mail Tree Inc., Case No. 0:15-cv-61034, 2016 WL 3950034 (S.D. Fla. Feb. 29, 2016) ("[e]ach decision should be made on a case-by-case basis"). As set forth below, the balancing of the aforementioned Keating factors weighs against granting the Government's requested stay, because the prejudice such a stay imposes on the Defendants is far too great. Therefore, the Court must deny the Government's Motion to Stay.

B. Mr. Haas' Fifth Amendment Rights Do Not Require A Stay

This factor is not implicated because the Government, not Mr. Haas, has moved for the stay. In fact, the Government's Motion to Stay makes clear that the Government is not concerned with Mr. Haas' Fifth Amendment rights. Therefore, this factor should weigh in favor of Mr. Haas and against the Government's request for a stay.

C. Mr. Haas Would Be Severely Prejudiced If A Stay Were Imposed With The Asset Freeze Still In Place

Mr. Haas, as the non-moving party would be severely prejudiced if the stay is granted. As noted above, Mr. Haas is the subject of an extremely restrictive asset freeze. Moreover, Mr. Haas denies the allegations made against him by the CFTC in the civil case and wishes to clear his name as soon as possible. Mr. Haas also needs to be exempted from the asset freeze in order to avoid financial ruin. The only way for Mr. Haas to accomplish these things is through civil discovery. Mr. Haas has a strong interest in obtaining exculpatory evidence and

testimony from the CFTC's witnesses before memories fade. Indeed, discovery has not yet commenced and Mr. Haas has already uncovered the existence of exculpatory information in the form of the Memorandum of Interview detailing defendant DaCorta's statements. Mr. Haas believes that additional exculpatory information and evidence will continue to come to light once discovery is underway. The requested stay only increases the likelihood that witnesses will not recall critical information, that witnesses will be unavailable, and that documents might be lost or destroyed. The CFTC has had the benefit of a lengthy investigation before the filing of their Complaint against Mr. Haas. It remains unclear how much, if at all, the CFTC worked in tandem with the Government in their investigation. However, based on the experience of the undersigned counsel, it is highly likely that the CFTC and the Government coordinated their efforts, and will continue doing so in the future. In contrast, Mr. Haas had no opportunity to conduct a pre-suit investigation before the asset freeze was imposed on him. The only opportunity that Mr. Haas will have to thoroughly investigate and challenge the allegations made against him will be through discovery in this case.

In SEC v. Fraser, No. 2:09-cv-443, 2009 WL 1531854, at *3 (D. Ariz. Jun. 1, 2009), the court addressed a situation similar to the one at issue here. The government requested a stay in a related civil case where the SEC alleged "serious violations of the securities laws" against the defendants. 2009 WL 1531854, at *3. The Fraser court ultimately held as follows:

> In light of the significant interest Defendants have in resolving this issue as soon as possible, the Government's generalized argument that civil discovery is broader than criminal discovery is not sufficient to establish the 'substantial prejudice' necessary to warrant a stay of the entire civil proceeding. . . . The preferred course of action in these circumstances is for the Court to evaluate the Government's specific objections to discovery requests as they arise. . . .

Id. at *4 (citations omitted). Here, Mr. Haas is facing allegations of serious violations of commodities laws. He has a significant interest in resolving the issues raised in the CFTC's Complaints as soon as possible. The Government has made only a generalized argument that civil discovery is broader, which is not sufficient to establish the substantial prejudice required for the granting of the stay. Courts can tailor and limit discovery to avoid prejudice as needed. See Milton Pollack, Parallel Civil and Criminal Proceedings, 129 F.R.D. 201, 211 (1990) ("I should stress that a general stay of all civil discovery is not by any means the best option available to the court or to the litigants. Stays can and should be tailored to avoid undue prejudice. By limiting both the time and subject matter covered in temporary deferrals of particular discovery, a Court can allow civil proceedings to progress as much as possible without prejudicing the relative interests of the litigants."). If the Court is inclined to impose a stay, this Court should address the Government's objections to discovery requests as the need arises, rather than issue a blanket stay.

D. The Burden On The Government If A Stay Is Denied Is Not Significant

The burden on the Government that might occur should the civil proceedings continue appears to be speculative at best. Despite the fact that the Government's investigation is in its initial stages, the Government raises concerns about putative defendants using civil discovery to gain an advantage in an anticipated criminal case. However, the Government has not yet filed a criminal case. Therefore, the Government's concerns are premature and require assumptions about how their criminal investigation will conclude. Moreover, the Government's motion discusses the Government's fear that individuals will use civil discovery material to alter their testimony in grand jury or proffer sessions, and attempt to evade prosecution or thwart the prosecution of an acquaintance. Further, the

Government's motion speculates that targets or subjects in the criminal investigation might attempt to conceal or destroy documentary or other physical evidence. Most, if not all of the concerns raised by the Government in their Motion to Stay, exist in virtually every criminal investigation. In fact, even if there was not a civil case running parallel to the Government's investigation, the same concerns would be present, as the Government has not sought to conduct its investigation covertly and has, instead, elected to investigate overtly by using the grand jury process.

"Although courts have been receptive to Government stay requests in civil cases brought by parties other than the Government, results in recent years have been markedly different when the Government itself brings a civil lawsuit simultaneous with a criminal proceeding." SEC v. Sandifur, No. 2:05-cv-1631, 2006 WL 3692611, at *2 (W.D. Wash. Dec. 11, 2006). Further, courts have frequently denied Government requests to stay parallel civil proceedings where the only claim of prejudice is based on the fear that civil litigants might gain an advantage they otherwise would not in a putative criminal case. See, e.g. United States v. FINRA, 607 F. Supp. 2d 391, 394 (E.D.N.Y. 2009) (holding "[i]n sum, the only 'prejudice' the Court can discern is that allowing the [civil proceeding] to go forward will result in the criminal defendants having more information than they would otherwise be entitled to at this stage under the Federal Rules of Criminal Procedure [and] . . . [t]his loss of the government's usual tactical advantage is insufficient to justify enjoining the [civil proceeding]."); United States v. All Funds on Deposit, 767 F. Supp. 36, 42 (E.D.N.Y. 1991) (denying the Government's motion for a stay, despite its generalized arguments, because it "faile[d] to point to any specific discovery request or abuse that has taken place or any other compelling reason why the [civil] action should be stayed at [that] time."); SEC v. Oakford Corp., 181 F.R.D.

269, 272–73 (S.D.N.Y. 1998) (holding "to the extent that the defendants' discovery requests simply result in the happenstance that in defending themselves against the serious civil charges that another government agency has chosen to file against them they obtain certain ordinary discovery that will also be helpful in the defense of their criminal case, there is no cognizable harm to the government in providing such discovery beyond its desire to maintain a tactical advantage.").

The CFTC does not oppose the Government's Motion to Stay. Interestingly, the CFTC has taken precisely the opposite position in the recent past. In CFTC v. Hartshorn, No. 1:16-cv-09802-ALC-DCF (S.D.N.Y. Apr. 11, 2019), a civil defendant who was also the target of a criminal investigation being conducted by the Government sought to stay the CFTC's case to allow the criminal investigation to play out. In a letter to the Court, the CFTC strenuously opposed Hartshorn's request for a stay, making arguments directly contrary to the Government's claims here. Attached hereto as Exhibit A is a copy of the CFTC's letter in Hartshorn. Specifically, the CFTC argued, inter alia, that the defense's requested stay was prejudicial to the CFTC and not in the public's interest because it would indefinitely delay discovery. Exhibit A, at p. 2. In Hartshorn, the CFTC also felt it was important to highlight for the court the fact that the civil defendant who sought the stay had not been charged criminally, and that there was "presently" no criminal case against the moving party. Id., at p. 1. The CFTC also cited CFTC v. A.S. Templeton Group, Inc., 297 F. Supp. 2d 531, 534 (E.D.N.Y. 2003) for the proposition that "[p]re-indictment requests for a stay of civil proceedings are generally denied." Id., at pp. 1-2. In view of the position that the CFTC recently took in Hartshorn, as described above, it is ironic to now see them not opposing the Government's Motion to Stay. Perhaps the principle at work here is that the CFTC supports

stays when the Government requests them but opposes stays when a defendant seeks one to protect his or her rights in a parallel criminal case. Notwithstanding the CFTC's tacit support of the Government's instant motion, the Court should deny the Government's request for a stay based on the foregoing case law. The only possible prejudice cited by the Government in their motion is the possibility that some of the defendants in the civil proceedings might gain some tactical advantage in a future criminal case as a result of civil discovery. As noted above, that is not sufficient to justify the requested stay.

E. The Court's Interest In Judicial Economy Weighs In Favor Of Denying The Stay

As in all cases, the Defendants, the Court, and the public have an interest in the expeditious resolution of this case. See In re Bolin & Co., LLC, No. 3:08-cv-1793, 2012 WL 3730410, at *4 (D. Conn. June 27, 2012) ("the interests of the court, and the public, are best served by the expeditious resolution of this case"); see also A.S. Templeton, 297 F. Supp. 2d at 535–36 (E.D.N.Y. 2003) ("convenience of the courts is best served when motions to stay proceedings are discouraged") (quoting United States v. Private Sanitation Industry Association, 811 F. Supp. 802, 808 (E.D.N.Y. 1992)). This case is particularly complex as it relates to Mr. Haas and SHC, and the Court's "strong interest in keeping litigation moving to conclusion without unnecessary delay.... is enhanced in complex litigation." In re CFS-Related Sec. Fraud Litig., 256 F. Supp. 2d 1227, 1241-42 (N.D. Okla. 2003).

Here, Mr. Haas is confident that once additional discovery is gathered it will become abundantly obvious to all parties that he had no knowledge whatsoever that defendant DaCorta and others were perpetrating a fraud. Therefore, Mr. Haas firmly believes that he will not be charged with a crime at the conclusion of the Government's investigation. This is

significant because the Government has argued in their Motion to Stay that considerations of judicial economy and the efficient resolution of civil disputes supports their application for a stay. More specifically, the Government suggests that the resolution of their investigation and any subsequent criminal prosecutions will serve to resolve issues of law and fact, narrowing the issues in dispute in the civil action. The Government is simply wrong. Mr. Haas committed no crimes and the Government's investigation, if properly conducted, will come to the same conclusion. However, even if Mr. Haas is exonerated in the Government's investigation, he believes it is highly likely that the CFTC will continue with the civil case against him. Therefore, the conclusion of the Government's investigation will not resolve issues of law and fact as it relates to Mr. Haas. For these reasons, judicial economy weighs in favor of denying the stay and allowing Mr. Haas to pursue civil discovery expeditiously so that he can clear his name and remove himself from the current asset freeze.

F. The Interests Of Third Parties Weigh In Favor Of Denying The Stay

The interests of third parties in the civil litigation weighs heavily in favor of denying the Government's request for a stay. The CFTC and the Government allege that there are more than 700 investor-victims in this case. Mr. Haas is one of these victims and he, like the other victims, has an interest in the expeditious resolution of the case.

Discovery has not yet commenced and the Defendants have issued no subpoenas or discovery requests. Courts have held, however, that the government should not seek a stay of parallel civil proceedings in order to "insulate its witnesses from discovery or questioning in anticipation of criminal trial." SEC v. Kanodia, 153 F. Supp. 3d 478, 481 (D. Mass. 2015). Witnesses, the Government, and the CFTC are fully capable of defending their own interests. To the extent that witnesses and third parties believe that the Defendants' future discovery

demands will go beyond what is ordinarily permitted in a civil case, the Court can address those issues as they arise.

G. The Public's Interest Is Always Best Served By Resolving Civil Disputes Expeditiously

The Government argues that the public's interests weigh in favor of granting the stay. However, the Government fails to demonstrate how and why the public's interests would be compromised if the requested stay were denied. Indeed, this is something that other Courts have required of the Government before granting a stay. See EEOC v. Glob. Horizons, Inc., Case No. 1:11-cv-257, 2011 WL 5325747, at *7 (D. Haw. Nov. 2, 2011) (despite interest in prompt resolution of criminal case, a stay is inappropriate where there is no evidence that "interest would be compromised if a stay were denied.").

Moreover, despite the Government's assertions, "[i]t is equally true, however, that the public ... have an interest in fair, open, and expeditious civil legal proceedings . . . ." Hymes v. Bliss, Case No. 3:16-cv-4288, 2018 WL 6079443, at *5 (N.D. Cal. Nov. 21, 2018). This is particularly powerful where, as here, the plaintiff is a government agency charged with civil enforcement responsibilities. Keating, 45 F. 3d, at 326 (stay of civil case "would have been detrimental to public confidence in the enforcement scheme for thrift institutions"); Dresser Indus., Inc., 628 F. 2d at 1380 (citing public importance of timely "[f]ulfillment of the SEC's civil enforcement responsibilities" in denying motion to stay pending parallel criminal case); SEC v. Kelly, Case No. 3:04-cv-2098, 2006 WL 8437214, at *4 (N.D. Tex. Mar. 9, 2006) (holding "[t]he public at large has a strong interest in a speedy resolution of enforcement actions brought by federal regulatory agencies."). The CFTC has certainly been a strong

proponent of the public interest in proceeding quickly with civil enforcement actions it files, as it expressed recently in Hartshorn. See Exhibit A.

The CFTC filed this suit, asserting publicly that Mr. Haas and others participated in a massive fraud. At the same time it filed suit, the CFTC issued a press release to the public, triggering significant media reporting about the case. This publicly followed case should be resolved as soon and as fairly as possible. See Keating, 45 F. 3d at 326 (recognizing public interest in resolution of civil case is magnified where it is the subject of "inordinate amount of media attention."). In sum, the public's interest weighs heavily in favor of allowing the civil case to proceed expeditiously and weighs against granting the stay.

H. There Is No Overlap Between Civil And Criminal Cases Because There Is No Criminal Case Yet

The Government argues that the most significant justification for the requested stay is the overlapping issues in the civil case and the criminal investigation. However, the primary concern that this Keating factor addresses is the overlap between a civil case and a criminal case, not a criminal investigation that has yet to result in an actual case. Pinnacle Quest, 2008 WL 4274498, at *2 (citing Keating, 45 F. 3d at 324–25). Here, there is not yet a criminal case to speak of, only an investigation. Moreover, as noted above, Mr. Haas fully expects that he will be exonerated in the criminal investigation and not charged in a criminal case. Therefore, for him, there will be no overlap between a criminal case and a civil case.

Lastly, in a very recent order, a district court addressed the Government's request to stay a pending SEC enforcement action where there was a parallel criminal case with overlapping issues of law and fact. SEC v. Balwani, No. 5:18-cv-01603-EJD (N.D. Cal. June 14, 2019). Attached hereto as Exhibit B is the Order in Balwani, supra. The Balwani court

rejected many of the same arguments raised by the Government in the instant motion. Exhibit B. Ultimately, the court found that the Keating factors did not support staying the SEC civil enforcement action, and denied the request for a stay. Id. In reaching this conclusion, the Balwani court aptly stated:

> The Court is not unsympathetic to DOJ's concerns that Balwani may attempt to overreach in civil discovery, **but the Court is capable of addressing such concerns with a scalpel instead of a saw**. **As with potential concerns over the discovery burdens to nonparties, SEC or DOJ may object to any discovery requests that it believes improperly go beyond the scope of this Action**. The Court will hear those objections and, if appropriate, sustain them.

Id., at p. 6 (emphasis added). This Court should rule likewise and address the Government's concerns "with a scalpel instead of a saw," i.e., the Court should address the Government's objections to any discovery requests as they arise, instead of staying the civil action in its entirety.

IV. CONCLUSION

Wherefore, the Defendants, Mr. Haas and SHC, request that this Court: (1) deny the Government's Motion to Stay; or in the alternative; (2) dissolve the receivership and asset freeze as it applies to Mr. Haas and SHC.

Respectfully submitted this 1st of July, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on July 1, 2019, I filed a copy of the foregoing with the Clerk of the Court via the CM/ECF system, which served all parties to this case who are equipped to receive service of documents via that system.

I FURTHER CERTIFY on July 1, 2019, I provided service of the foregoing via electronic mail to:

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s/ A. Brian Phillips
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