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

COMMODITY FUTURES TRADING COMMISSION, Plaintiff, v. OASIS INTERNATIONAL GROUP, LIMITED; OASIS MANAGEMENT, LLC; SATELLITE HOLDINGS COMPANY; MICHAEL J. DACORTA; JOSEPH S. ANILE, II; RAYMOND P. MONTIE, III; FRANCISCO "FRANK" L. DURAN; and JOHN J. HAAS, Defendants, and MAINSTREAM FUND SERVICES, INC.; BOWLING GREEN CAPITAL MANAGEMENT LLC; LAGOON INVESTMENTS, INC.; ROAR OF THE LION FITNESS, LLC; 444 GULF OF MEXICO DRIVE, LLC; 4064 FOUNDERS CLUB DRIVE, LLC; 6922 LACANTERA CIRCLE, LLC; 13318 LOST KEY PLACE, LLC; and 4OAKS LLC, Relief Defendants	Case No. Judge:

PLAINTIFF COMMODITY FUTURES TRADING COMMISSION'S EMERGENCY EX PARTE MOTION FOR A STATUTORY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND OTHER EQUITABLE RELIEF AND MEMORANDUM IN SUPPORT

Pursuant to Section 6c(a) of the Commodity Exchange Act, 7 U.S.C. § 13a-1(a) (2012) (the "Act"), and in accordance with Rule 65 of the Federal Rules of Civil Procedure ("Fed. R. Civ. P. 65"), Plaintiff Commodity Futures Trading Commission ("CFTC" or "Commission") moves the Court on an emergency basis for the immediate entry of an ex parte statutory restraining order ("Proposed SRO"), without bond, and setting a date for a preliminary injunction hearing. In support of its Emergency Ex Parte Motion for a Statutory Restraining Order, Preliminary Injunction, and Other Equitable Relief and Memorandum In Support against Defendants Oasis International Group, Limited; Oasis Management, LLC; Satellite Holdings Company; Michael J. DaCorta; Joseph S. Anile, II; Raymond P. Montie, III; Francisco "Frank" L. Duran; and John J. Haas, and Relief Defendants Mainstream Fund Services, Inc.; Bowling Green Capital Management LLC; Lagoon Investments, Inc.; Roar of the Lion Fitness, LLC; 444 Gulf of Mexico Drive, LLC; 4064 Founders Club Drive, LLC; 6922 Lancantera Circle, LLC; 13318 Lost Key Place, LLC; and 4Oaks LLC, the Commission submits the following supporting memorandum of law in support, along with the attached declarations and the related exhibits attached thereto.

MEMORANDUM OF LAW

I. INTRODUCTION

As described below and alleged in the Commission's Complaint for Injunctive Relief, Civil Monetary Penalties, Restitution, Disgorgement and Other Equitable Relief ("Complaint"), Defendants have engaged, are engaging, and/or may be about to engage in acts and practices that constitute violations of Sections 4b(a)(2)(A)-(C), 4k(2), 4m(1), 4*o*(1)(A)-(B), and 2(c)(2)(iii)(I)(cc) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C), 6k(2), 6m(1), 6*o*(1)(A)-(B), 2(c)(2)(iii)(I)(cc) (2012), and Commission Regulations ("Regulations") 4.20(b)-(c), 4.21, 5.2(b)(1)-(3), and 5.3(a)(2), 17 C.F.R. § 4.20(b)-(c), 4.21, 5.2(b)(1)-(3), 5.3(a)(2) (2018).

Since 2011, Defendants Oasis International Group, Limited ("OIG"), Oasis Management, LLC ("OM"), Satellite Holdings Company ("Satellite Holdings"), Michael J. DaCorta ("DaCorta"), Joseph S. Anile, II ("Anile"), Raymond P. Montie, III ("Montie"), Frank Duran ("Duran"), and John J. Haas ("Haas") (collectively, "Defendants") have engaged in a fraudulent scheme to solicit and misappropriate money from over 700 U.S. residents for pooled investments in retail foreign currency contracts ("forex"). Between mid-April 2014 and the present (the "Relevant Period"), Defendants have fraudulently solicited hundreds of members of the public ("pool participants") to invest approximately $75 million in two commodity pools—Oasis Global FX, Limited ("Oasis Pool 1") and Oasis Global FX, SA ("Oasis Pool 2") (collectively, the "Oasis Pools")—that would purportedly trade in forex. Rather than use pool participants' funds for forex trading as promised, however, Defendants

have traded only a small portion of pool funds in forex—which incurred trading losses—and instead misappropriated the majority of pool participants' funds and issued false account statements to pool participants to conceal their trading losses and misappropriation.

In the course of their fraudulent scheme, Defendants made material misrepresentations to pool participants including that: (1) all pool funds would be used to trade forex; (2) pool participants would receive a minimum 12% guaranteed annual return from this forex trading; (3) the Oasis Pools were profitable and returned 22% in 2017 and 21% in 2018; (4) the Oasis Pools had never had a losing month; (5) money being returned to pool participants was from profitable trading; (6) there was no risk of loss with the Oasis Pools; and (7) pool participants earned extra returns by referring other pool participants to the Oasis Pools. Defendants also omitted to tell pool participants, among other things, that DaCorta—the CEO of OIG and the Oasis Pools' head trader—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.

Defendants' representations were false. The Defendants have misappropriated the majority of pool funds. Of the approximately $75 million Defendants received from pool participants during the Relevant Period, Defendants deposited only $21 million into forex trading accounts in the names of the Oasis Pools, all of which has been lost trading forex.[1] To conceal their trading losses and misappropriation, Defendants created and issued false

[1] Commission staff received new trading records on April 8, 2019, but has not yet been able to determine trading returns or losses in these records.

account statements to pool participants that inflated and misrepresented the value of the pool participants' investments in the Oasis Pools and the Oasis Pools' trading returns.

Defendants misappropriated approximately $29 million of pool funds to make Ponzi-like payments to other pool participants. Defendants misappropriated over $18 million of pool funds—at least $7 million of which was transferred to Relief Defendants—for unauthorized personal or business expenses such as real estate purchases in Florida, luxury cars, exotic vacations, private plane charters, sports tickets, loans to family members, and college and study abroad tuition.

Consequently, in accordance with 7 U.S.C. § 13a-1(a) (2012) and Fed. R. Civ. P. 65, the Commission moves that the Court grant, ex parte, a statutory restraining order which preserves the status quo by: (1) freezing Defendants' assets by prohibiting them or any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property; (2) prohibiting Defendants from destroying any records; (3) permitting the CFTC to inspect Defendants' records, including through authorizing the copying of the records to allow inspection to occur and requiring Defendants to provide information necessary to locate and access those records; and (4) appointing a temporary receiver.[2] To obtain this relief, the Commission need only make a prima facie showing that Defendants have engaged in acts or practices that violate the Act and Regulations. *CFTC v. Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978).

[2] 7 U.S.C. § 13a-1(b) provides that "[u]pon a proper showing, a permanent or temporary injunction or order shall be granted without bond."

Pursuant to Fed. R. Civ. P. 65(b)(2), the Proposed SRO will expire in fourteen (14) days. Therefore, the Commission also respectfully moves the Court to issue, after a hearing, a preliminary injunction that (1) prohibits further violations of the Act and Regulations; (2) continues the freeze on the funds, assets, and other property of the Defendants and Relief Defendants as ordered in the Proposed SRO; (3) extends the appointment of the temporary receiver for the duration of this action; and (4) orders any additional relief this Court deems appropriate pending a trial on the merits of this action. The Commission respectfully requests that the hearing on its motion for preliminary injunction be scheduled within fourteen days from the date the Court issues the Proposed SRO. The Commission also moves the Court to permit the parties to engage in expedited discovery and remove the prohibition set forth in Fed. R. Civ. P. 26(d) on discovery before the early meeting of counsel pursuant to Fed. R. Civ. P. 26(f).

The present motion and memorandum in support incorporates by reference each and every factual allegation made and contained in the Complaint. In accordance with Fed. R. Civ. P. 65(b), this motion is further supported by the sworn statements of the following three declarants:

1. Elsie Robinson ("Robinson"), an investigator for the Commission, who provides facts regarding Defendants' and Relief Defendants' bank accounts and activity; use of pool funds; Defendants' trading at a foreign forex broker; statements Defendants made to individuals about the Oasis Pools; and documents received from these individuals;

2. Louis Berardocco ("Berardocco"), Senior Manager of Examinations in the Compliance Department of the National Futures Association ("NFA"), who provides facts about the NFA's previous audit of Defendant DaCorta and his company International Currency Traders Ltd. ("ITC"); DaCorta's offline settlement with the NFA; and a complaint the NFA received from a prospective Oasis pool participant; and

3. Sandra A. Jung ("Jung"), the NFA's Registration Manager, who provides facts about Defendants' registration status.

II. STATEMENT OF FACTS

A. The Oasis Common Enterprise

Defendants operate their fraudulent scheme through the following interrelated domestic and foreign entities:

Defendant Entities	**Corporate Information**	**Role in Scheme**
OIG	Cayman Islands (2013 - present)	OIG solicits U.S. residents and receives or accepts funds from pool participants for the Oasis Pools in Fundadministration/Mainstream bank accounts. OIG is owned and directed by DaCorta, Anile, and Montie. Declaration of Elsie Robinson ("Robinson Decl.") ¶¶ 12, 34-43, 57, 60, 63.
OM	Wyoming (2011 - present)	OM receives pool participant funds in its name in Bank #1 bank accounts controlled by DaCorta. These Bank #1 bank accounts are controlled by DaCorta. Robinson Decl. ¶¶ 10, 45, 48.

Defendant Entities	**Corporate Information**	**Role in Scheme**
Satellite Holdings	South Dakota (October 2014 - present)	Satellite Holdings solicits U.S. residents and receives or accepts funds for the Oasis Pools in its name in Bank #1 bank accounts controlled by Haas. Satellite Holdings is owned and managed by Haas. Robinson Decl. ¶¶ 13-14, 34-43, 51, 54.

Investment Pools	**Corporate Information**	**Role in Scheme**
Oasis Global FX, Limited ("OGFXL")	New Zealand (May 2012 - June 2015)	Some pool funds were transferred to a forex trading account in OGFXL's name in the United Kingdom ("UK Forex Firm"). All of the pool funds transferred to this account were lost trading forex. OGFXL is owned by OIG and is licensed as a financial services provider in New Zealand. Robinson Decl. Section V.
Oasis Global FX, S.A. ("OGFXS)	Belize (August 2016-present)	Some pool funds were transferred to a forex trading account in OGFXS's name at the UK Forex Firm. All of the pool funds transferred to this account were lost trading forex. OGFXS is owned by Anile and is licensed as a financial services provider in Belize. Robinson Decl. Section V.

Among other things OIG, OM, and Satellite Holdings share the same office and employees, commingle funds, and operate under one overarching name "Oasis." Robinson Decl. ¶ 37, Section VII. Additionally, DaCorta and/or Anile own and/or control OIG, OM, OFXL, and OFGXS. Robinson Decl. ¶¶ 10-12, Section V**.** Defendant Haas owns and controls Satellite, but also works for OIG. Robinson Decl. ¶¶ 13-14, 37.

The Oasis enterprise appears to operate one common website. During a part of the Relevant Period, the website was located at www.oasisinternationalgroupltd.com. According

to this website, Oasis "provides an array of asset management and advisory services, including corporate finance and investment banking . . . investment sales/trading and clearing services . . . financial product development, and alternative investment products." Declaration of Louis Berardocco ("Berardocco Decl.") ¶¶ 40, 42, Ex. C, pg.1.

The Oasis website has a banner prominently displayed across the bottom of each page, which states**:**

> The services and products offered by Oasis International Group Ltd. are *not being offered* within the United States (US) and [are] not being offered to US persons, as defined under US law. As such, should you reside in, or be a citizen, or a taxpayer of the US or any US territory, any email message received is not intended to serve as a solicitation or inducement on behalf of any of the aforementioned entities.

Berardocco Decl. ¶¶ 40, 42, Ex. C. Despite this disclaimer, Defendants have solicited hundreds of U.S. residents and continue to actively solicit U.S. residents to invest in the Oasis Pools. Robinson Decl. Section VI.

B. DaCorta's Permanent Registration Ban

From 2006 to 2010, DaCorta was listed as a principal of and registered with the Commission as an AP of a CTA called International Currency Traders, Ltd. ("ICT"), which offered forex trading to U.S. retail customers. DaCorta was ICT's President. Berardocco Decl. ¶¶ 14-23, 26.

In 2009, the NFA—the self-regulatory organization designated by the Commission as a registered futures association—identified several violations of NFA rules by ICT. Berardocco Decl. ¶¶ 22, 31-32, Ex. A. Among other things, the NFA discovered that DaCorta and ICT solicited some of their forex customers to loan money to ICT, and that

some of those funds were used to make payments to former ICT customers with trading losses in 2007. *Id*. The customers who loaned the money to ICT were not told that their money would go to other ICT customers. *Id*.

In August 2010, DaCorta and the NFA entered into an agreement whereby DaCorta agreed to withdraw from NFA membership and never to re-apply for NFA membership in any capacity, at any time in the future, to avoid an NFA disciplinary action against him and ICT. Berardocco Decl. ¶¶ 34-39, Ex. B. Effectively, this meant DaCorta was permanently banned from registering with the Commission as a CPO, CTA, or as an AP or principal of a CPO or CTA. Berardocco Decl. ¶¶ 11-12, 37-38, Ex. B.

During the Relevant Period, Defendants did not disclose to pool participants that DaCorta was permanently banned from registering with the Commission and could not solicit investments or invest for others in, among other things, retail forex. Robinson Decl. Section VI.

C. Defendants' Unprofitable Trading

In or around April 2015, Anile opened a forex trading account at a forex trading broker in the United Kingdom. Robinson Decl. ¶ 27. The forex trading account was held in the name of and for the benefit of OGFXL, which is a New Zealand company owned by OIG. *Id*. DaCorta is the president and Anile is the vice president of OGFXL. *Id*. Anile and DaCorta were the only signatories on this forex trading account, and DaCorta was the only person authorized to trade the account. *Id*. Approximately $1,650,000 was deposited into the account. Robinson Decl. ¶ 28. The account suffered net trading losses of approximately $1,654,000 and was closed February 7, 2017. *Id*.

In or around December 2016, Anile opened another forex trading account at ATC. Robinson Decl. ¶ 29. This forex trading account was held in the name of and for the benefit of OGFXS, a Belizean company owned by Anile. *Id*. Anile is the only signatory on the account, yet indicated on the account opening documents that another person would trade the account. *Id*. DaCorta also traded this account. *Id*. Between January 2017 and November 30, 2018, this account received deposits totaling $19,625,000.00. Robinson Decl. ¶30. As of November 29, 2018, this account had total losses of approximately $60 million. *Id*. As of November 30, 2018, this account remained open with a balance of approximately $750,000. *Id*.

Through the U.K. forex broker accounts, Defendants engaged in forex transactions on a leveraged or margined basis that did not result in delivery within two days or otherwise create an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business. Robinson Decl. ¶ 31. The trades were leveraged 100:1, which means that the Oasis Pools could trade forex contracts valued at one hundred times the amount of cash in the OGFXL and OGFXS trading accounts. *Id*. Defendants do not appear to have traded forex in any other accounts during the Relevant Period. Robinson Decl. ¶ 33

D. Defendants' Fraudulent Solicitations For The Oasis Pools

During the Relevant Period, Defendants OIG, OM, and Satellite Holdings, by and through DaCorta, Montie, Duran, and Haas (and/or their other employees or agents), fraudulently solicited and obtained over $75 million from approximately 700 pool participants as investments in the Oasis Pools. Defendants made material misrepresentations

and omissions to pool participants and prospective pool participants via the Oasis website, telephone calls, in-person meetings, and in promissory notes they executed with pool participants. Defendants' fraudulent solicitations included, but were not limited to, representations that:

a) all pool funds would be used to trade forex;

b) pool participants would receive a minimum 12% guaranteed annual return from forex trading;

c) the Oasis Pools were profitable and returned 22% in 2017 and 21% in 2018;

d) the Oasis Pools never had a losing month;

e) money being returned to pool participants was from profitable trading;

f) there was no risk of loss with the Oasis Pools; and

g) pool participants could earn extra returns by referring other pool participants to the Oasis Pools.

Robinson Decl. Section VI.

1. **Fraudulent Solicitations by Haas and DaCorta**

During the Relevant Period, Haas and DaCorta hosted Oasis conference calls in which they solicited U.S. residents to invest in the Oasis Pools. Among other things, they told prospective pool participants that the Oasis Pools earned 21% in 2018; they could guarantee incoming pool participants a 12% annual return on their investments; forex trading

was almost risk-free; and the only way forex trading could be a bad investment was "if all the banks in the world closed."[4]

2. **Fraudulent Solicitations by Montie**

In January 2019, Defendant Montie represented on a conference call with a prospective pool participant's investment advisor ("Person 1") that Oasis was a privately held company in the Cayman Islands that invested in foreign currency. Montie said that Oasis divided the returns it earned trading foreign currency with pool participants who loaned Oasis money, and that interest was deposited into pool participants' accounts on a daily basis. Montie said that any pool participant who brought other pool participants into Oasis would receive a portion of the interest their referral earned from the Oasis Pools. Montie said that Oasis had never had a down day trading forex. Montie said there was no income or net worth requirements for investing in Oasis. Robinson Decl. ¶ 34.

In late January 2019, a couple who had invested their IRA and life savings in the Oasis Pools, based on representations by Defendant Montie, met with a person they believed to be a prospective pool participant ("Person 2") and shared their experiences with Oasis. This couple invested in the Oasis Pools based on representations made by Defendant Montie. Defendant Montie told the couple the following:

a) the Oasis Pools were investing in forex;

b) pool participants would receive a minimum return of 12% per year;

[4] The Commission has information that Haas and DaCorta participated in conference calls to solicit prospective pool participants; however, the Commission has not received this information directly from a person who has participated on such calls and can recall the speakers' names.

c) pool participants would earn an additional 25% of the returns of any pool participant they referred to Oasis;

d) Montie, as a favor, would allow the couple to get referral fees from a pool participant who recently invested $950,000 in the Oasis Pools, so the couple would earn additional interest based on this referral;

e) DaCorta traded forex for the Oasis Pools and was the brains of the operation;

f) the only time the Oasis Pools lost money was about seven years ago when the Oasis Pools were just getting started and only Montie's money was lost; and

g) even though pool participants are called lenders, they are really investors.

Robinson Decl. ¶ 37.

One day later, Defendant Montie had a telephone call with Person 2. Person 2 told Montie he was interested in investing in the Oasis Pools. In response, Montie stated the following:

a) Montie started Oasis about eight years ago after meeting Defendant DaCorta in Poughkeepsie, New York;

b) Montie gave DaCorta $25,000 to trade in October 2011 and within approximately seventy days DaCorta had turned it into $37,000 trading forex;

c) in January 2012, Montie brought in some friends and family and DaCorta started trading their money (approximately $81,000);

d) in seven years Oasis has grown to having $130 million under management;

e) the Oasis Pools earned a 22% return in 2017 and a 21% return in 2018;

f) the Oasis Pools average a 1% monthly return and have never had a losing month;

g) the Oasis Pools are a lot less risky than the stock market;

h) Montie had all of his friends and family involved in the Oasis Pools and they were doing extremely well; and

i) pool participants' funds are used only to trade forex.

Robinson Decl. ¶ 38.

3. **Fraudulent Solicitations by Duran**

Less than a week later, Defendant Duran met with Person 2 at Oasis's offices in Longboat Key. Person 2 indicated he was interested in investing in the Oasis Pools. In response, Duran stated the following:

a) the Oasis Pools would return a minimum of 12% per year;

b) when the Oasis Pools made more than 12% a year, Oasis paid 25% of these additional returns back to pool participants and 75% of these additional returns went "to the house" to pay OIG's expenses, fees, salaries, referral fees, and to purchase real estate;

c) the Oasis Pools made a 21% return in 2018;

d) the Oasis Pools had $100 million under management;

e) the Oasis Pools' trading platform could not lose money unless there was a bigger problem in the financial markets and people were going to supermarkets with shotguns;

f) Duran invested in the Oasis Pools, has been helping DaCorta with the day-to-day operations of OIG because he wants to be close to his money, and has been getting money wired to his accounts every day at 7:30 p.m.;

g) DaCorta was the head trader for the Oasis Pools and Oasis traded forex twenty-four hours a day, five days a week, with Oasis traders working three shifts; and

h) OIG purchased OIG's office and personal residences for Defendants DaCorta, Anile and Duran.

Robinson Decl. ¶ 39.

Less than a month later, Duran sent Person 2 an email from fduran@oasisig.com entitled "Fw: wire instructions.pdf." The email states that funds should be wired to account

XXXXXX0764 at Citibank. The beneficiary was designated as Mainstream Fund Services, Inc., with a reference to "fbo Oasis International Group, Ltd." Robinson Decl. ¶ 36.

That same day, Duran sent Person 2 another email from fduran@oasisig.com, attaching a sample promissory note. *Id*. The attachment is entitled "PROMISSORY NOTE AND LOAN AGREEMENT" and the maker of the note is "Oasis International Group, Ltd." *Id*. The note states that payee would receive the greater of interest calculated at 12% per year or 25% of the Transaction Fees, which were defined as "the fees charged by OIG upon the Loan Amount in its ordinary course of business through a proprietary trading account" of OIG. *Id*. The Promissory Note is signed by Defendant DaCorta as CEO of OIG. The note is dated June 29, 2018. *Id*.

Approximately two weeks later, Person 2 again met Defendant Duran at Oasis's offices in Longboat Key. Person 2 explained he was interested in investing a large sum in the Oasis Pools. In response, Defendant Duran stated the following:

a) when pool participants invest money in the Oasis Pools, their funds will be "at play" trading forex immediately;

b) the Oasis Pools paid a minimum 12% annual return from forex trading, but pool participants could earn extra if the Oasis Pools made a higher return trading forex;

c) the Oasis Pools made a 21% return trading forex in 2018, and all pool participants earned more than 12% in 2018;

d) the Oasis Pools have never had a losing year, and pool participants could never lose money trading in the Oasis Pools;

e) pool participants have the option to withdraw their trading profits immediately or the profits automatically get rolled into their principal investment;

f) the Oasis Pools' trading returns were wired to pool participants at 7:30 p.m. daily, Monday through Friday;

g) pool participants are called lenders to avoid investment in the Oasis Pools being called a security;

h) DaCorta was not earning a big salary from Oasis or the Oasis Pools because he makes what he trades and "we all eat from the same pot;"

i) all Oasis fees and expenses are paid from the Oasis "house" side and not from pool participants' investments in the Oasis Pools; and

j) pool participants' funds would be used only to trade forex and would not be used to invest in real estate, though $15 to $16 million of real estate owned by Oasis is collateral for the pool participants' promissory notes.

Robinson Decl. ¶ 40.

That same day Duran sent Person 2 an email from fduran@oasisig.com with a link to open his account at OIG located at the web address https://www.oasisigltd.com. When Person 2 clicked on the link, there were two documents for him to review and approve: a "Promissory Note and Loan Agreement" and "Agreement and Risk Disclosures." The "Agreement and Risk Disclosures" document stated, among other things:

a) OIG provided no collateral to the Lender in connection with any money loaned to OIG;

b) OIG could use the funds loaned to it by pool participants for any purpose whatsoever and could transfer the funds to other OIG accounts; and

c) OIG could invest money loaned to it by the pool participant in forex or spot metal trading, which the Agreement and Risk Disclosures noted is highly speculative and suitable for only certain investors.

Robinson Decl. ¶ 36.

4. **Fraudulent Representations About the "Agreement and Risk Disclosures"**

Both DaCorta and Duran have made misrepresentations about the "Agreement and Risk Disclosures" provided to pool participants. In March 2019, Defendant Duran had a

telephone call with Person 2, who was very concerned about the "Agreement and Risk Disclosures" document and was reconsidering his investment in the Oasis Pools. Robinson Decl. ¶ 41. Duran responded to Person 2's concerns about the "Agreement and Risk Disclosures" document by assuring him that:

a) the document was not binding and by clicking "agree" he was only acknowledging that he read the document;

b) his funds would only be invested in forex;

c) his funds would not be used to purchase real estate;

d) his funds could never depreciate;

e) he would receive a guaranteed 12% annual return even if the Oasis Pools did not earn that much, because OIG makes up the difference;

f) pool participants' returns were from forex trading profits;

g) OIG paid fees, salaries, and expenses and purchased real estate and precious metal from "house" money, which was 75% of any returns the Oasis Pools made above 12%;

h) OIG purchased real estate and precious metals to shore up its strength and protect investors;

i) OIG owned enough gold that even if the economy turned down, no one would miss a beat; and

j) Duran's investment in the Oasis Pools, which he made over two years ago, was doing very well.

Id.

In April 2019, Defendants Duran and DaCorta had a telephone call with the Person 2 to confirm Duran's prior representations about the Agreement and Risk Disclosures. During the call, DaCorta stated the following:

a) DaCorta is Oasis's principal and signs the loan agreements with Oasis pool participants;

b) new Oasis pool participants' promissory notes and other documents are uploaded into Oasis' back office;

c) Anile reviews the wires from pool participants and lets others know that a new Oasis pool participant is approved;

d) "some lawyer" drafted the Oasis risk disclosures and required Oasis to throw in every possible thing that can go wrong, even though "99% of the things [in it] we don't do;"

e) Oasis doesn't take compensation from pool funds, but uses pool funds to do the forex transactions and Oasis is earning money between the total spread captured;

f) Oasis is not invested in real estate to generate Oasis investor income, but to protect investors;

g) Oasis paid full prices for the real estate and there are no mortgages on the properties;

h) Oasis has hard assets and gold and silver, which is a buffer between pool participants' investments and company capital;

i) even if the banks close and currencies collapse, pool participants wouldn't lose their buying power because of the assets Oasis holds;

j) Oasis developed a system to capture the spread between the bid and the offer, which is not based on P&L and pool participants are making money on the number of positions Oasis captures and will not be in a negative position;

k) Oasis pool participants' "money is going to forex trading;" and

l) Oasis guarantees a 1% minimum monthly return.

Robinson Decl. ¶ 42.

E. Defendants' Representations Were False

Defendants' representations were false because, as described further below, Defendants did not use all of pool participants' funds to engage in forex trading, and instead

misappropriated the majority of pool funds—over $47 million—to make Ponzi payments and for unauthorized personal and business expenses, including real estate and luxury car purchases, tuition payments, and investments in other, non-forex business ventures. Robinson Decl. ¶¶ 46, 49, 52, 55, 58, 61, 64, 65.

Defendants' representations about the profitability of the Oasis Pools were false. DaCorta lost all of the pool funds deposited into the Oasis Pools' forex accounts through poor trading. Robinson Decl. ¶¶ 28, 30. The Oasis Pools' actual trading returns in 2017 were not 22%, but negative 45%. Robinson Decl. ¶ 30. The Oasis Pools' actual trading returns in 2018 were not 21%, but negative 96%. *Id*.

Defendants' representations regarding the risk associated with the Oasis Pools were false. Investment in the Oasis Pools was not riskless. The forex trades in the Oasis accounts had a 100:1 leverage ratio and carried a high degree of risk. Robinson Decl. ¶ 31. In fact, the Oasis Pools could rapidly lose all the funds deposited into the forex accounts and even lose more than what was initially deposited.

Defendants' representations about Oasis having over $100 million under management were false. In total, Defendants have received less than $80 million from pool participants and very little of those funds were actively traded by DaCorta, and even those funds that were traded were lost by DaCorta. Robinson Decl. ¶¶ 28, 30, 65.

Defendants' statements that pool participants' investments were backed-up by $15 to $16 million in real estate owned by OIG were also false. In addition, Duran's representations that he invested in the Oasis Pools and was watching his money grow were false, as it appears Duran never invested in the Oasis Pools. Robinson Decl. ¶ 45.

In soliciting pool participants for the Oasis Pools, Defendants made no attempt to determine if they were eligible contract participants ("ECPs")—i.e., individuals with $10,000,000 invested on a discretionary basis—and upon information and belief many, if not all, of the pool participants are not ECPs. Robinson Decl. ¶ 34(f).

F. Defendants Misappropriated Pool Funds

During the Relevant Period, pool participants sent checks and wired funds for investments in the Oasis Pools to one or more of the following bank accounts:

Account	**Pool Funds Received**
OM Accounts at Bank #1 (as of February 28, 2019)	$24,208,396.74
Satellite Holdings Accounts at Bank #1 (as of March 8, 2019)	$14,373,770.83
Fundadministration/Mainstream Accounts at Bank #1 and Bank #5 (as of March 8, 2019)	$36,534,648.64
Total Pool Funds Received	**$75,116,816.21**

Robinson Decl. ¶¶ 45, 48, 51, 54, 57, 60, 65. Many the deposits into these accounts had the notation "investment" "for Oasis fund" "initial investment" or the like. *Id*.

Instead of using all or substantially all of pool participants' funds for forex trading, as promised, Defendants misappropriated the majority of pool participants' funds from the OM, Mainstream/Fundadministration, and Satellite Holdings accounts as follows:

Use of Pool Funds	**Amount**
Ponzi Payments	$28,944,355.27

Use of Pool Funds	**Amount**
Real estate purchases and maintenance or improvements to real estate including, but not limited to, the Oasis office building and residences for Defendants DaCorta, Anile, and Duran. This category includes transfers to Relief Defendants 444 Gulf of Mexico, 4064 Founders Club, 6922 Lacantera, and 13318 Lost Key Place.	$7,803,932.04
Personal expenses, including but not limited to, private plane charters, exotic vacations, sports tickets, pet supplies, loans to family members, and college and study abroad tuition.	$6,981,839.06
Non-forex business expenses and business ventures owned by Defendants, including but not limited to, transfers to Relief Defendants Bowling Green, Roar of the Lion, Lagoon, and 4Oaks.	$3,332,861.44
Vehicle purchases, including a Maserati and Land Rover for DaCorta.	$111,463.82
Total	**$47,174,451.63**

Robinson Decl. ¶¶ 46, 49, 52, 55, 58, 61, 64, 65.

As of February 28, 2019, only approximately $7.1 million remained in the Mainstream Accounts, $2.7 million remained in the OM accounts, and $240,000 remained in the Satellite Holdings accounts. Robinson Decl. ¶¶ 44, 47, 50, 53, 56, 73-74. It appears that Defendants also have a foreign bank account in Belize that appears to be open and to which Defendants could transfer pool funds. *Id*. ¶ 45(g).

G. Defendants Diverted Pool Funds to Relief Defendants

Relief Defendant Mainstream Fund Services, Inc.[5] Citibank Accounts XXXXXX1174, XXXXXX5606, and XXXXXX0764 ("Mainstream Accounts") directly or indirectly received funds from participants for investment in the Oasis Pools during the Relevant Period. Robinson Decl. ¶¶ 56,-58, 73-74. Since 2011, pool participants have been sending checks and wiring funds for investments in the Oasis Pools to one or more bank accounts, including the Mainstream Accounts. *Id.* ¶ 56-57. During the Relevant Period, the Mainstream Accounts received over $35 million, of which $17.9 million was transferred to the offshore forex trading account in the United Kingdom. *Id.* ¶ 30.

Pool funds were also diverted to the Relief Defendants, as follows:

Relief Defendant	Defendant Control Person/s or Entity/ies	Pool Participant Funds Received During the Relevant Period
Bowling Green Capital Corporation	Anile	$2,181,156.26
Lagoon Investments, Inc.	DaCorta and Anile	$ 318,038.33
Roar of the Lion Fitness, LLC	DaCorta	$ 71,518.88
444 Gulf of Mexico Drive, LLC	OIG	$ 834,136.84
4064 Founders Club Drive, LLC	Anile	$ 592,973.87
6922 Lacantera Circle, LLC	OM/DaCorta	$ 213,054.50
13318 Lost Key Place, LLC	OIG	$ 265,319.23
4Oaks LLC	Anile	$ 177,550.00

[5] Unlike the other Relief Defendants, Mainstream Fund Services, Inc. appears to be unrelated to and/or not controlled by any of the Defendants. It is a third-party administrator for the financial services industry.

Robinson Decl. ¶¶ 66-73. These Relief Defendants appear to be shell corporate entities, which were formed and then used by the Defendants as vehicles to misappropriate pool funds.

H. False Account Statements

Throughout the Relevant Period, pool participants had access to online account statements generated by OIG at Defendants' direction. Pool participants accessed their account statements in the "back office" section of the Oasis website. Robinson Decl. ¶¶ 8(e), 37, Ex. C. These account statements purport to provide, among other things, (1) the pool participants' balance at the beginning of each month; (2) pool participants' daily returns earned in an amount totaling 1% per month, which purports to reflect the amount of interest pool participants were earning each day from the Oasis Pools; (3) pool participants' daily special interest returns at 25% of transaction fees, which purports to reflect the amount of extra interest pool participants were earning each day from either referral arrangements or the Oasis Pools' generating more than the guaranteed 12% annual return; and (4) pool participants' "additional loans," which purports to reflect returns that were earned but not withdrawn and therefore rolled into the pool participants' "principal." Robinson Decl. Ex. C, pp. 1-4, 8.

These account statements were false because the Oasis Pools were losing money. Robinson Decl. ¶¶ 28, 30. Thus, any returns or increased principal reflected on pool participants' account statements—which were purportedly based on forex trading in the Oasis Pools—were a complete fiction. *Id.* These false account statements concealed the

Oasis Pools' trading losses and Defendants' misappropriation of pool funds. One or more of the Defendants created or caused the false accounts statements to be created.

I. Defendants Failed to Register with the Commission

During the Relevant Period, Defendants OIG, OM, and Satellite Holdings—by and through their officers, employees or agents—used the mails, electronic mails, wire transfers, websites, and other means or instrumentalities of interstate commerce to solicit pool participants and prospective pool participants and to receive property from pool participants. Robinson Decl. Sections VI,VII. During the Relevant Period, OIG, OM, and Satellite Holdings acted as CPOs of the Oasis Pools because they were entities engaging in a business that is of the nature of a commodity pool and, in connection with that business, solicited and/or accepted pool funds for a pooled investment vehicle that is not an ECP and that engages in retail forex transactions. Berardocco Decl. ¶¶ 11, 42-43; Robinson Decl. Sections VI, VII. During the Relevant Period, OIG, OM, and Satellite Holdings were not statutorily exempt or excluded from registration as a CPO. Berardocco Decl. ¶ 45. Moreover, OIG, OM, and Satellite Holdings never filed any electronic or written notice with the NFA that they were exempt or excluded from registration as a CPO, as required by Commission Regulations 4.5(c) and 4.13(b)(1). OIG, OM, and Satellite Holdings were not registered with the Commission as CPOs. Berardocco Decl. ¶ 45; Certification of Sandra A. Jung ("Jung Cert."), pp. 1-6.

During the Relevant Period, DaCorta, Montie, Duran, and Haas acted as APs of CPOs because they solicited funds or property for participation in a pooled investment vehicle that is not an ECP and that engages in retail forex transactions. Berardocco ¶ 12; Robinson Decl.

Section VI. During the Relevant Period, DaCorta, Montie, Duran, and Haas were never registered with the Commission as APs of CPOs. Berardocco Decl. ¶¶ 20-31; Jung Cert., pp. 9-14.

J. Defendants Failed to Receive Funds in the Names of the Oasis Pools and Commingled Pool Funds

Defendants OIG, OM, and Satellite Holdings, while acting as CPOs of the Oasis Pools, received pool funds that were not in the name of the Oasis Pools and commingled pool funds with non-pool property by depositing pool funds into the bank accounts of OM, Satellite Holdings, Fundadministration, and Mainstream, rather than separate bank accounts specifically designated for the Oasis Pools. Robinson Decl. ¶¶ 45, 48, 51, 54, 57, 63.

While acting as CPOs of the Oasis Pools, Defendants OIG, OM, and Satellite Holdings commingled pool funds with non-pool property by transferring pool funds from the OM, Satellite Holdings, Fundadministration, and Mainstream bank accounts into other accounts holding non-pool funds. Robinson Decl. ¶¶ 45, 48, 51, 54, 57, 63, 66-75.

K. Defendants Failed to Provide Risk Disclosures

At or near the time of investment, Defendants provided potential pool participants with a document titled "Agreement and Risk Disclosures," along with a "Promissory Note and Loan Agreement." The Agreement and Risk Disclosures purported to alert investors to the risks associated with investing in foreign currency exchange, but at the same time, the Promissory Note and Loan Agreement guarantees pool participants a 12% annual return. Defendants' Agreement and Risk Disclosures did not include the required cautionary statement to investors or a full and complete risk disclosure, including the risks involved in foreign futures contracts and retail forex trading. Robinson Decl. ¶ 36(e).

In addition to Defendants' inadequate cautionary statements and risk disclosures, Defendants also failed to provide pool participants with additional required information, including but not limited to the fees and expenses incurred by the Oasis Pools, past performance disclosures, and a statement that the CPO is required to provide all pool participants with monthly or quarterly account statements, as well as an annual report containing financial statements certified by in independent public accountant. Robinson Decl. Section VI.

L. Control of OIG, OM, and Satellite Holdings

During the Relevant Period, DaCorta was a controlling person of OIG and OM. He is OIG's chief executive officer, chief investment officer, and is in charge of OIG's marketing and creditor relations. Berardocco Decl. Ex. C, pg. 16. DaCorta signed promissory notes provided to pool participants guaranteeing a minimum 12% return from the Oasis Pools. Robinson Decl. ¶¶ 36(c), 42, Ex. C, pp. 5-7. According to OIG's website, DaCorta is responsible for all investment decisions, trading execution, services, sales, clearing and operations of OIG. Berardocco Decl. Ex. C, p. 16. For OM, DaCorta opened bank accounts in November 2011 and is the sole signatory on these accounts. Robinson Decl. ¶¶ 44, 47.

During the Relevant Period, Defendant Anile was a controlling person of OIG. He co-founded and is a member, director, and president of OIG. Berardocco Decl. Ex. C, p. 17. Anile has responsibility for staffing, guiding, and managing OIG's vision, mission, strategic plan, and direction. *Id.* Additionally, Anile opened trading accounts for the Oasis Pools. Robinson Decl. ¶¶ 27, 29. Anile reviewed incoming pool participant deposits and informed DaCorta when deposits had been made. Robinson Decl. ¶ 42. He also facilitated real estate

purchases with pool funds and was involved in diverting funds from OIG to other business entities. Robinson Decl. ¶¶s 66, 67, 69, 72.

During the Relevant Period, Defendant Montie was a controlling person of OIG. He co-founded and is a member of OIG. Robinson Decl. ¶¶ 12, 38. Montie solicits prospective pool participants and introduces them to OIG and/or DaCorta. Robinson Decl. ¶¶ 37-38.

During the Relevant Period, Defendant Haas was a controlling person of Defendant Satellite Holdings. Haas is the director of Satellite, and he opened and was the sole signatory on bank accounts in the name of Satellite Holdings, which received funds from pool participants. Robinson Decl. ¶¶ 13, 50, 53. Haas was in charge of assisting pool participants who wished to invest their IRAs and/or retirement funds in the Oasis Pools. Robinson Decl. ¶ 37.

III. ARGUMENT

A. Defendants Committed Fraud in Violation of Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (2012) and Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3) (Count One)

7 U.S.C. § 6b(a)(2)(A)-(C) makes it illegal for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, for or on behalf of, or with, any other person other than on or subject to the rules of a designated contract market: (i) to cheat or defraud or attempt to cheat or defraud such other person; (ii) willfully to make or cause to be made to such other person any false report or statement, or willfully to enter or cause to be entered for such person any false record; or (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any

act or agency performed with respect to such order or contract for such person. "By its terms, Section 4b is not restricted in its application to instances of fraud or deceit 'in' orders to make or the making of contracts. Rather, Section 4[b] encompasses conduct 'in or in connection with' futures transactions. The plain meaning of such broad language cannot be ignored." *Hirk v. Agri-Research Council, Inc.*, 561 F.2d 96, 103-04 (7th Cir. 1977); *see also CFTC v. Gresham*, No. 3:09-CV-75, 2011 WL 8249266, at *3 (N.D. Ga. Sept. 8, 2011) (ruling that Section 4b encompasses fraudulent misrepresentations "in connection with" promissory notes given to secure funds used to trade forex).

Defendants violated 7 U.S.C. § 6b(a)(2)(A)-(C) by making material misrepresentations and omissions to pool participants, by misappropriating pool participants' funds for use on personal and improper business expenses, and by issuing false accounts statements to pool participants.

1. Fraud by Misappropriation

Misappropriation of investor funds is a "willful and blatant" fraud that violates 7 U.S.C. § 6b(a) (2012). *CFTC v. Noble Wealth Data Info. Servs., Inc.*, 90 F. Supp. 2d 676, 687 (D. Md. 2000), *aff'd in part, rev'd in part sub nom. CFTC v. Baragosh*, 278 F.3d 319 (4th Cir. 2002); *CFTC v. Allied Markets LLC*, No. 3:15-cv-5-J-34MCR, 2019 WL 1014562, at *5 (M.D. Fla. Mar. 4, 2019). During the Relevant Period, Defendants misappropriated over $47 million of pool funds, made Ponzi payments back to pool participants in the amount of approximately $28 million, and spent approximately $18 million of pool funds on a variety of business and personal expenses unrelated to forex trading, including real estate, automobile, and private plane charters. They also diverted pool funds to Relief Defendants. Defendants' acts of

misappropriation of pool funds are a clear example of "willful and blatant" fraud in violation of 7 U.S.C. § 6b(a) (2012).

2. Fraud by Misrepresentations and Omissions

Misrepresentations and/or omissions to prospective pool participants violate 7 U.S.C. § 6b(a) (2012) where (1) the defendant misrepresented or failed to disclose certain information; (2) the misrepresentation or omission was material; and (3) the defendant acted with scienter. *CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1328 (11th Cir. 2002). The evidence here is sufficient to satisfy all three elements.

First, Defendants made numerous misrepresentations to prospective pool participants and pool participants. "Whether a misrepresentation has been made depends on the 'overall message' and the 'common understanding of the information conveyed.'" *Id*. (citing *Hammond v. Smith Barney Harris Upham & Co.*, CFTC No. 86-R131, 1990 WL 282810, at *4 & n. 12 (Mar. 1, 1990)). Defendants made numerous false representations to prospective and actual pool participants regarding the activity of Oasis, the returns earned by the Oasis Pools forex trading, and the risk associated with investing in the Oasis Pools, among other things.

Defendants also omitted to tell pool participants and prospective pool participants that: the Oasis Pools had negative returns, that almost all of the money transferred to trading accounts was lost trading, that DaCorta was banned from trading forex for others, and that Defendants were using pool participant funds for non-forex trading purposes, including improper business and personal expenses.

Second, Defendants' misrepresentations and omissions were material. A representation or omission is material if "a reasonable investor would consider it important in deciding whether

to make an investment." *R.J. Fitzgerald*, 310 F.3d at 1328–29; *see also CFTC v. Commonwealth Fin. Group, Inc.*, 874 F. Supp. 1345, 1353–54 (S.D. Fla. 1994) (noting that "past success and experience are material factors which a reasonable investor would consider when deciding to invest"); *CFTC v. Rosenberg*, 85 F. Supp. 2d 424, 447 (D.N.J. 2000) (finding that reporting erroneous account balances, among other representations, were material to investors). Any fact that enables customers to assess independently the risk inherent in their investment and the likelihood of profit is a material fact. *In re Commodities Int'l Corp.*, CFTC No. 83-43, 1997 WL 11543, at *8-9 (Jan. 14, 1997) (finding that misrepresentations and omissions to customers were material and fraudulent because customers could not properly evaluate their circumstances with regard to risk of loss and opportunity for profit). Misrepresentations concerning the profitability of a customer's investment are generally deemed to be material and violative of the antifraud provisions of the Act. *See CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1330 (11th Cir. 2002); *CFTC v. Noble Wealth Data Info. Servs., Inc.*, 90 F. Supp. 2d 676, 686 (D. Md. 2000) ("Indeed, misrepresentations concerning profit and risk go to the heart of a customer's investment decision and are therefore material as a matter of law."), *aff'd in part, vacated in part sub nom. CFTC v. Baragosh*, 278 F.3d 319 (4th Cir. 2002). Here, the majority of Defendants' misrepresentations went directly to the Oasis Pools' profitability, which is at the heart of a potential investor's decision-making process. The Defendants' misrepresentations were therefore material.

Defendants' omissions to pool participants and prospective pool participants were also material. Reasonable pool participants would want to know that Defendants were not successful forex traders and had not earned profits trading forex; that DaCorta was banned from soliciting

others to trade forex, or to trade forex for others; and that Defendants were using some of their funds for personal and other expenses. A statement or omitted fact is material if "there is a substantial likelihood that a reasonable investor would consider the information important in making a decision to invest." *R.J. Fitzgerald*, 310 F.3d at 1328-29. Certainly knowledge that pool funds were not being used to trade forex, but instead to purchase houses and cars for Defendants, or that the small percentage of money actually traded in forex was entirely lost, would be relevant to a pool participant or potential pool participant. Defendants' omissions were therefore also material.

Third, defendants acted with the requisite scienter in making these misrepresentations and omissions of fact. Scienter is established by showing that either: (1) the defendant knew his representations were false; or (2) the defendant made his representations with a reckless disregard for their truth or falsity. *See CFTC v. Noble Metals Int'l, Inc.*, 67 F.3d 766, 774 (9th Cir. 1995) (finding that with regard to a Section 4b claim, the Commission must show that a defendant either "intentionally violated the Act or acted with 'careless disregard' of whether his actions violated the Act"); *Drexel Burnham Lambert Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988) (holding that recklessness is sufficient to satisfy scienter requirement). At the very least, it is reckless to induce pool participants to invest in a pool with promises of high returns and low risk. *See R.J. Fitzgerald*, 310 F.3d at 1330. Conduct involving "highly unreasonable omissions or misrepresentations . . . that present a danger of misleading [retail customers] which is either known to the Defendant or so obvious that [the] Defendant must have been aware of it" have been found to meet the scienter requirement. *CFTC v. Hunter Wise Commodities, LLC*, 21 F. Supp. 3d 1317, 1339 (S.D. Fla. 2014) (citing *R.J. Fitzgerald*, 310 F.3d at 1328).

Here, Defendants knew or were reckless in not knowing that their representations of were false. First, Defendants DaCorta and Haas knew that they were 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. Second, DaCorta knew that his forex trading was unprofitable and that he was banned from trading forex for others by virtue of his signing an agreement with the NFA that explicitly stated the same. Third, Duran knew that he had not invested any money in the Oasis Pools. Fourth, at a minimum, all Defendants were reckless because they were they were touting an investment opportunity that offered high returns with no risk, which courts have found to be inconceivable on its face and require a heightened duty to investigate. *See, e.g., SEC v. Asset Recovery & Mgmt. Tr., S.A.*, No. 2:02-CV-1372, 2008 WL 4831738, at *8 (M. D. Ala. Nov. 3, 2008). Had any of the Defendants done any due diligence on the Oasis Pools, they would have easily been able to determine the Oasis enterprise was nothing but a fraud. Defendants therefore acted with the requisite scienter in their representations and omissions regarding the Oasis Pools.

3. Fraud by False Account Statements

Defendants violated 7 U.S.C. § 6b(a) (2012) by issuing false account statements to the Oasis Pools' participants. Making false statements concerning profitability of trading, including by distributing false periodic account statements, violates 7 U.S.C. § 6b(a) (2012). *See, e.g., CFTC v. Weinberg*, 287 F. Supp. 2d 1100, 1107 (C.D. Cal. 2003) (finding that false and misleading statements as to amount and location of investor money violated 7 U.S.C. § 6b(a)); *Noble Wealth,* 90 F. Supp. 2d at 686 (finding defendant's profit claims constituted false reports and fraud within the meaning of the Act); *CFTC ex rel. Kelley v. Skorupskas*, 605 F. Supp. 923,

932-33 (E.D. Mich. 1985) (finding defendant violated 7 U.S.C. § 6b(a) by issuing false monthly statements to customers).

During the Relevant Period, Defendants prepared and delivered to pool participants, via the OIG website, false account statements. These false account statements purport to provide, among other things, the account balance and the returns earned by the pool participants. Despite the representations of positive returns in these account statements provided by Defendants, however, the Oasis Pools did not make the represented profits, and in fact experienced trading returns of negative 45% in 2017 and negative 96% in 2018. Defendants therefore provided false account statements in violation of 7 U.S.C. § 6b(a) (2012).

4. Violations of Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3) (2018)

Defendants violated 17 C.F.R. § 5.2(b)(1)-(3) (2018), which makes it unlawful:

> for any person, by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction: (1) To cheat or defraud or attempt to cheat or defraud any person; (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.

Defendants are liable for violating 17 C.F.R. § 5.2(b)(1)-(3) (2018) for the same reasons that they are liable for violating 7 U.S.C. § 6b(a), because it adds only one additional element: that defendants' conduct must involve "use of the mails or by any means or instrumentality of interstate commerce." Here, Defendants used the telephone, email, the Internet, bank accounts, and wire transfers to solicit pool participants, and as a result, violated 17 C.F.R. § 5.2(b)(1)-(3) (2018).

B. Defendants Committed Fraud in Violation of Section 4*o*(1) of the Act, 7 U.S.C. § 6*o*(1) (2012) (Count Two)

1. Defendants OIG, OM, and Satellite Holdings are CPOs, and DaCorta, Montie, Duran, and Haas are APs of CPOs

Although not registered as such, Defendants OIG, OM, and Satellite Holdings are CPOs of the Oasis Pools, and Defendants DaCorta, Montie, Duran, and Haas are associated persons of these CPOs. 7 U.S.C. § 1(a)(11) (2012) defines a CPO as any person

> engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests, including any—
>
> (I) commodity for future delivery, security futures product, or swap; [or]
> (II) agreement, contract, or transaction described in section 2(c)(2)(C)(i) of this title or section 2(c)(2)(D)(i) of this title[.]

Under 17 C.F.R. § 5.2(d)(1) (2018), and subject to certain exceptions not relevant here, any person who operates or solicits funds, securities, or property for a pooled investment vehicle, and engages in retail forex transactions, is defined as a retail forex CPO. 7 U.S.C. § 2(c)(2)(C)(ii)(I) (2012) provides that "[a]greements, contracts, or transactions" in retail forex and accounts or pooled investment vehicles "shall be subject to . . . section [] 4o [of the Act]," except in circumstances not relevant here.

During the Relevant Period, OIG, OM, and Satellite Holdings—acting as a common enterprise—solicited, accepted, and received from others funds for the purpose of trading in forex in the Oasis Pools. Therefore, Defendants OIG, OM, and Satellite Holdings are CPOs.

Defendants DaCorta, Montie, Duran, and Haas acted as APs of a CPO. 17 C.F.R. § 1.3 (2018) defines an AP of a CPO as a natural 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) 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[.]

Under 17 C.F.R. § 5.1(d) (2018), 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 defined as an AP of a retail forex CPO.

During the Relevant Period, Defendants DaCorta, Montie, Duran, and Haas were associated with a CPO as a partner, officer, employee, consultant, or agent in a capacity that involved the solicitation of funds for the Oasis Pools, or the supervision of any person or persons so engaged. As a result, Defendants DaCorta, Montie, Duran, and Haas are APs of a CPO.

2. OIG, OM, and Satellite Holdings, as CPOs, and DaCorta, Montie, Duran, and Haas, as APs of OIG, OM, and Satellite Holdings, Violated Section 4o(1) of the Act

Defendants violated 7 U.S.C. § 6*o*(1) (2012) by making material misrepresentations and omissions to pool participants, by misappropriating pool participants' funds for use on personal and improper business expenses, and by issuing false account statements. 7 U.S.C. § 6*o* (2012) is a parallel statute to 7 U.S.C. § 6b (2012) in that the same conduct that violates 6b can violate 6*o*. *CFTC v. Driver*, 877 F. Supp. 2d 968, 978 (C.D. Cal. 2012). The only additional element

set forth in 7 U.S.C. § 6*o* (2012) is that Defendants' conduct must involve use of the mails or any means or instrumentality of interstate commerce, which it did. Section 4*o*(1) of the Act applies to all CPOs and APs, among others, whether registered, required to be registered, or exempt from registration. *CFTC ex rel. Kelley v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985). For the same reasons Defendants violated 7 U.S.C. § 6b (2012), they violated 7 U.S.C. § 4*o* (2012).

C. Defendants OIG, OM, Satellite Holdings, DaCorta, Montie, Duran and Haas Failed To Register with the Commission in Violation of Sections 4k(2) and 4m(1) of the Act, 7 U.S.C. §§ 6k(2), 6m(1), (2012) and Regulation 5.3(a)(2), 17 C.F.R. § 5.3(a)(2) (2018) (Count Three)

Although required to by 7 U.S.C. §§ 6m(1) and 6k(2) (2012), Defendants OIG, OM, and Satellite Holdings did not register as CPOs, and Defendants DaCorta, Montie, Duran, and Haas did not register as APs of CPOs. It is unlawful for a CPO, unless registered, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as a CPO. 7 U.S.C. § 6m(1) (2012). Similarly, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) (2012) states that a person shall not operate or solicit funds for any pooled investment vehicle in connection with forex transactions, unless registered with the Commission. *See also* 17 C.F.R. § 5.3(a)(2) (2018) (requiring forex CPOs and APs of forex CPOS to register as such with the Commission). "The intent of the congressional design is clear; persons engaged in the defined regulated activities within the commodities business are not to operate as such unless registered . . . and the Commission is empowered to seek injunctive prohibitions against violations of any provisions of the Act, including registration provisions." *CFTC v. British Am. Commodity Options*, 560 F.2d 135, 139 (2d Cir. 1977). "Registration is the kingpin in this statutory machinery, giving the Commission the

information about participants in commodity trading which it so vitally requires to carry out its other statutory functions of monitoring and enforcing the Act." *Id.* at 139–40.

Defendants OIG, OM, and Satellite Holdings acted as CPOs by, among other things, soliciting, accepting, and receiving funds from others for forex trading by the Oasis Pools. Defendants OIG, OM, and Satellite Holdings have never been registered with the Commission, and are not otherwise exempt or excluded from registration. *See*, *e.g.*, 17 C.F.R. § 4.5 (2018) (exclusion from definition of CPO) and 17 C.F.R. § 4.13 (2018) (exemption from registration provisions). Defendants DaCorta, Montie, Duran, and Haas acted as APs by, among other things, associating with a CPO as a partner, officer, employee, consultant, or agent in a capacity that involved the solicitation of funds for the Oasis Pools. Because they were required to register with the Commission, but did not, Defendants OIG, OM, Satellite Holdings, DaCorta, Montie, Duran and Haas violated 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6k(2), and 6m (2012), as well as 17 C.F.R. § 5.3(a)(2) (2018).

D. Defendants OIG, OM, and Satellite Holdings Failed to Properly Receive and Commingled Pool Funds in Violation of Regulation 4.20(b)-(c), 17 C.F.R. § 4.20(b)-(c) (2018) (Count Four)

Defendants OIG, OM, and Satellite Holdings violated 17 C.F.R. § 4.20(b)-(c) by receiving funds in names other than the Oasis Pools and also by commingling pool funds with non-pool funds. 17 C.F.R. § 4.20(b) (2018) prohibits CPOs—whether registered or not—from receiving pool funds in any name other than that of the pool.[6] 17 C.F.R. § 4.20(c) (2018)

[6] 17 C.F.R. § 5.4 (2018) states that 17 C.F.R. §§ 4.1, et seq., applies to any person required to register as a CPO under 17 C.F.R. §§ 5.1, et seq. relating to forex transactions.

prohibits a CPO, whether registered or not, from commingling the property of any pool it operates with the property of any other person.

During the Relevant Period, Defendants OIG, OM, and Satellite Holdings, while acting as CPOs for the Oasis Pools, violated 17 C.F.R. § 4.20(b) by receiving pool funds that were not in the names of the Oasis Pools, and by depositing pool funds into the bank accounts of OM, Satellite Holdings, Fundadministration, and Mainstream, rather than separate bank accounts designated for the Oasis Pools. Defendants OIG, OM, and Satellite Holdings therefore violated 17 C.F.R. § 4.20(b)-(c) (2018).

E. Defendants OIG, OM, and Satellite Holdings Failed to Provide Pool Participants with Disclosure Documents in Violation of Regulation 4.21, 17 C.F.R. § 4.21(2018) (Count Five)

Defendants OIG, OM, and Satellite Holdings violated 17 C.F.R. § 4.21 (2018) by failing to provide prospective pool participants and pool participants with disclosures and other required documents. CPOs are required to provide pool participants with certain disclosures. 17 C.F.R. § 5.4 (2018), states that 17 C.F.R. pt. 4 (2018), applies to any person required to register as a CPO pursuant to 17 C.F.R. pt. 5 (2018) (relating to forex transactions). 17 C.F.R. § 4.21 (2018), provides that

> each commodity pool operator registered or required to be registered under the Act must deliver or cause to be delivered to a prospective participant in a pool that it operates or intends to operate a Disclosure Document for the pool prepared in accordance with §§ 4.24 and 4.25 by no later than the time it delivers to the prospective participant a subscription agreement for the pool . . . .

17 C.F.R. § 4.24 (2018) outlines in detail twenty-three types of general disclosures required for pools, while 17 C.F.R. § 4.25 (2018) outlines in detail the performance disclosures

required for pools, including performance disclosures for different points in time of the pool's operating history.

Defendants OIG, OM, and Satellite Holdings, as well as their control persons, Defendants DaCorta, Anile, Montie, and Haas, failed to provide to prospective pool participants with a pool disclosure document in the form specified in Regulations 4.24 and 4.25. Further, Defendants' Agreement and Risk Disclosures do not include the required cautionary statement to investors or a full and complete risk disclosure, including the risks involved in foreign futures contracts or retail forex trading, nor additional required information such as fees and expenses incurred by the pool, past performance disclosures, and an annual report containing financial statements certified by in independent public accountant. Defendants OIG, OM, and Satellite Holdings therefore violated 17 C.F.R. § 4.21 (2018).

F. Derivative Liability

1. Defendants OIG, OM, and Satellite Holdings Operated as a Common Enterprise

Defendants OIG, OM, and Satellite Holdings are liable for the acts of each other because they acted as a common enterprise. When "corporations act as a common enterprise, each may be held liable for the deceptive acts and practices of the other." *FTC v. Direct Benefits Group LLC*, No. 6:11-cv-l 186, 2013 WL 3771322, at *18 (M.D. Fla. July 18, 2013) (citations omitted). When determining whether a common enterprise exists, courts consider "a variety of factors, including: common control, the sharing of office space and officers, whether business is transacted through a maze of interrelated companies, unified advertising, and evidence which reveals that no real distinction existed between the Corporate Defendants." *Id.*

Defendants OIG, OM, and Satellite Holdings operate their fraudulent scheme through interrelated domestic and foreign entities, share the same office and employees, commingle funds, and operate under one overarching name, "Oasis." Additionally, DaCorta and/or Anile own and control OIG, OM, OGFXL, and OGFXS, and Haas owns and controls Satellite Holdings, but also works for OIG. The Oasis enterprise also appears to operate one common website. The intertwined nature of the Oasis business operations warrants the corporate Defendants' treatment as a common enterprise, thus making each individual company liable for the deceptive acts and practices of the other.

2. Defendant OIG's, OM's, and Satellite Holdings's Liability as Principals

Defendants OIG, OM, and Satellite Holdings are also liable for the acts of their agents. Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), states that the act, omission, or failure of any person acting for any entity within the scope of his employment or office shall be deemed the act, omission or failure of such entity, as well as of that person. *See R.J. Fitzgerald*, 310 F.3d at 1335 (imposing liability on corporate entity because of acts of individuals).

During the Relevant Period, Defendant DaCorta was an officer, employee or agent of both OIG and OM. Likewise, Defendants Anile, Montie, and Duran were officers, employees or agents of OIG. Therefore, OM and OIG are liable for the acts and omissions of DaCorta done in the scope of his employment or office pursuant to 7 U.S.C. § 2(a)(1)(B) (2018) and 17 C.F.R. § 1.2 (2018). OIG is liable for the acts and omissions of Anile, Montie and Duran done in the scope of their employment or office pursuant to 7 U.S.C. § 2(a)(1)(B) (2018) and 17 C.F.R. § 1.2 (2018). Similarly, during the Relevant Period, Defendant Haas was an officer, employee or agent of OIG and Satellite Holdings. Therefore, OIG and Satellite Holdings are

liable for the acts and omissions of Haas done in the scope of his employment or office pursuant to 7 U.S.C. § 2(a)(1)(B) (2018) and 17 C.F.R. § 1.2 (2018).

3. Defendant DaCorta's, Anile's, Montie's, and Haas's Controlling Person Liability

Defendants DaCorta, Anile, Montie, and Haas are liable for the acts of Defendants OIG, OM, and Satellite Holdings because they are control persons of those entities. Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), states that a controlling person of an entity is liable for the violations of that entity if the controlling person knowingly induced the violations, directly or indirectly, or did not act in good faith. "A fundamental purpose of Section 13[(b)] is to allow the Commission to reach behind the corporate entity to the controlling individuals of the corporation and to impose liability for violations of the Act directly on such individuals as well as the corporation itself." *R.J. Fitzgerald*, 310 F.3d at 1334 (quoting *JCC, Inc. v. CFTC*, 63 F.3d 1557, 1567 (11th Cir. 1995)). The defendant in *R.J. Fitzgerald* was the company's principal and "exercised the ultimate choice-making power with the firm regarding its business decisions," "reviewed and approved the activities that [violated the Act]," and "was ultimately responsible for compliance with all applicable rules on commodities solicitations." *Id.*

Defendant DaCorta was a controlling person of both OIG and OM throughout the Relevant Period because he co-founded and is a member, director, the chief executive officer, and the chief investment officer of OIG, as well as the sole signatory on OM bank accounts. DaCorta did not act in good faith or knowingly induced OIG's violations because he had actual knowledge of the core activities that caused OIG's violations. Therefore, DaCorta is liable for OIG's and OM's violations of the Act and Regulations, pursuant to 7 U.S.C. § 13c(b) (2012).

See CFTC v. FX First, Inc., No. 03-1454JVS, 2007 WL 9711431, at *8–12 (C.D. Cal. Sept. 28, 2007) (applying Section 13(b) and finding controlling person liability).

Defendant Anile was a controlling person of OIG throughout the Relevant Period because he co-founded and is a member, director, and president of OIG, and is responsible for staffing, guiding, and managing OIG's vision, mission, strategic plan, and overall direction. Anile had access to the Oasis Pools' trading statements and knew DaCorta's forex trading was unprofitable, and therefore he did not act in good faith or knowingly induced OIG's violations of the Act and Regulations. Therefore, Anile is liable for OIG's violations of the Act and Regulations under 7 U.S.C. § 13c(b) (2012).

Defendant Montie was a controlling person of OIG throughout the Relevant Period because he is a member of OIG and co-founded Oasis with DaCorta. Montie works with DaCorta on a daily basis and sometimes travels from New Hampshire to Florida to work with DaCorta and OIG in person, and also talks to prospective and current pool participants about OIG and the Oasis Pools' performance. Montie did not act in good faith or knowingly induced OIG's violations of the Act and Regulations because he made misrepresentations to pool participants about the Oasis Pools. Therefore, Montie is liable for OIG's violations of the Act and Regulations under 7 U.S.C. § 13c(b) (2012).

Defendant Haas was a controlling person of Satellite Holdings throughout the Relevant Period because he is Satellite Holdings' sole director and sole signatory on its bank account. Haas accepted pool participants' money into Satellite's bank account and then misappropriated some of those funds, and therefore did not act in good faith or knowingly induced Satellite

Holdings' violations. Haas is therefore liable for Satellite Holdings' violations of the Act and Regulations 7 U.S.C. § 13c(b) (2012).

G. Relief Defendants Have No Legitimate Claim to Pool Funds

The Relief Defendants named in the Complaint have no legitimate claim to any of the pool funds. The court may grant equitable relief against a relief defendant if it is established that the relief defendant possesses property or profits illegally obtained and the relief defendant has no legitimate claim to them. *CFTC v. Vision Fin. Partners, LLC*, No. 16-60297-CIV, 2017 WL 2875428, at * 5 (S.D. Fla. Mar. 23, 2017); *see also SEC v. Cherif*, 933 F.2d 403, 414 (7th Cir. 1991).

Relief Defendant Mainstream Fund Services, Inc. and the Mainstream f/b/o Oasis Accounts have no legitimate claim to pool funds and did not provide any services related to the Oasis Pools or for pool participants. The Mainstream f/b/o Oasis Accounts simply acted as pass-through accounts from which pool funds could be aggregated and then transferred to offshore forex trading accounts in the United Kingdom, as well as to the Defendants or to other businesses owned by the Defendants. These multi-million dollar transfers of pool participants' funds do not represent compensation for services that Mainstream provided to Defendants in connection with the Oasis Pools. Mainstream should be required to disgorge any money it received that can be traced to pool funds.

The other Relief Defendants should also be required to disgorge the money they received—almost every cent of which can be traced to pool funds— because these funds were illegally obtained and they have no legitimate claim to them.

IV. RELIEF SOUGHT

A. The Court Has Jurisdiction and Authority To Grant the Relief Sought

As described above and in the Complaint, the Commission has made a prima facie showing that Defendants have violated and continue to violate 7 U.S.C. §§ 6b(a)(2)(A)-(C), 6k(2), 6m(1), 6o(1)(A)-(B), 2(c)(2)(iii)(I)(cc) (2012), and 17 C.F.R. § 4.20(b)-(c), 4.21, 5.2(b)(1)-(3), 5.3(a)(2) (2018). Defendants have already misappropriated at least $47 million of pool funds, and there is a substantial likelihood that Defendants are continuing their fraud. In addition, Defendants hold foreign accounts to which pool funds could be transferred. The Commission's request for an ex parte statutory restraining order is necessary to preserve the status quo. The Proposed SRO freezes Defendants' assets, prohibits defendants from destroying any records, permits the CFTC to inspect and copy Defendants' records, requires Defendants to provide information necessary to locate and access those records, and appoints a temporary receiver. The Commission seeks this relief pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2012), and in accordance with Fed. R. Civ. P. 65. The Commission also seeks expedited discovery pursuant Fed. R. Civ. P. 26(d).

7 U.S.C. § 13a-1(a) authorizes the CFTC to seek injunctive and other relief in a district court against any person whenever it shall appear to the Commission that such 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 thereunder.

7 U.S.C. § 13a-1(a) further authorizes the Commission to seek, and the Court to grant, certain specific ex parte relief, namely—

> a restraining order which [1] prohibits any person from destroying, altering, or disposing of, or refusing to permit authorized representatives of the

> Commission to inspect, when and as requested, any books and records or other documents[,] or [2] which prohibits any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property, and [3] . . . an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate.[7]

Mindful that notice "may result in the destruction of books and records and the dissipation of customer funds," Congress authorized courts to issue such relief ex parte in order "to prevent possible removal or destruction of potential evidence or other impediments to legitimate law enforcement activities and to prohibit movement or disposal of funds, assets and other property which may be subject to lawful claims of customers." H.R. Rep. No. 97-565, at 53–54, 93 (1982), *reprinted in* 1982 U.S.C.C.A.N. 3871, 3902–03, 3942. In the past, this District has granted the type of ex parte relief sought here in similar circumstances. *See CFTC v. Allied Markets, LLC*, No. 3:15-CV-5-J-34MCR, 2019 WL 1014562 at *1 (M.D. Fla.

---

[7] The full text of 7 U.S.C. § 13a-1(a) reads:

> Whenever it shall appear to the Commission that any registered entity or other person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule, regulation, or order thereunder, or is restraining trading in any commodity for future delivery or any swap, the Commission may bring an action in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such act or practice, or to enforce compliance with this chapter, or any rule, regulation or order thereunder, and said courts shall have jurisdiction to entertain such actions: *Provided*, That no restraining order (other than a restraining order which prohibits any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records or other documents or which prohibits any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property, and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate) or injunction for violation of the provisions of this chapter shall be issued ex parte by said court.

In addition, 7 U.S.C. § 13a-1(b) provides that "[u]pon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond."

March 4, 2019) (noting, when ruling on the CFTC's motion for summary judgment, that at "the beginning of these proceedings, on CFTC's motion, the Court entered an *ex parte* statutory restraining order.); *see also CFTC v. Intertrade Forex, Inc.*, No. 6:03-CV-119-ORL31DAB, 2005 WL 332816 (M.D. Fla. Jan. 4, 2005) (entry of *ex parte* statutory restraining order where the defendants had engaged, were engaging or were about to engage in act or practice constituting a violation of Act).

The freeze of Defendants' and Relief Defendants' funds, assets, or property in the Proposed SRO is relief that fits squarely within the Court's authority under the plain language of 7 U.S.C. § 13a-1(a). Further, an asset freeze is especially appropriate where, as here, the Commission seeks disgorgement and restitution. *See CFTC v. Levy*, 541 F.3d 1102, 1114 (11th Cir. 2008) (holding in the context of an injunction pending satisfaction of judgment that "a district court may freeze a defendant's assets to ensure the adequacy of a disgorgement remedy"); *CFTC v. Muller*, 570 F.2d 1296, 1301 (5th Cir. 1978) (similar in granting a preliminary injunction); *SEC* v. *Abdallah*, No. 1:14-cv-1155, 2014 WL 12597836, at *2 (N.D. Ohio May 30, 2014) (similar in the context of a temporary restraining order); *F.T.C. v. Health Formulas, LLC*, No. 2:14-CV-01649-RFB, 2015 WL 4623126, at *2 (D. Nev. Aug. 3, 2015) ("As it stated in its Temporary Restraining Order . . . the Court has found that the asset freeze is necessary to preserve the possibility of future relief."). As another district court explained, "[m]oreover, an order imposing a temporary freeze of assets is often necessary simply to preserve the status quo while an investigation is conducted to clarify the sources of various funds." *CFTC v. Morgan, Harris & Scott, Ltd.*, 484 F. Supp. 669, 678 (S.D.N.Y. 1979) (context of a preliminary injunction); *see also CFTC v. Steele*, No. 05-c-

3130, 2005 WL 3723267, at *1 (N.D. Ill. May 26, 2005) (ex parte restraining order freezing assets necessary to preserve the status quo).

The Proposed SRO also requires Defendants and Relief Defendants to preserve certain records and allow Commission representatives to inspect and copy such records.[8] Preservation and inspection of the records will allow the Commission to identify assets, the identity of other victims of Defendants' fraud, and to identify the scope of Defendants' wrongdoing, as well as ensure that Defendants and Relief Defendants do not destroy evidence of their fraud. The Commission also requests authority to copy the records (with the records being returned to Defendants and Relief Defendants afterwards) as part of the order requiring preservation and allowing inspection of the records. Although 7 U.S.C. § 13a-1(a) does not expressly provide for copying of records, such authority is necessary to give practical meaning to the Commission's right to inspect. "The law has long recognized that the 'authorization of an act also authorizes a necessary predicate act.'" *Luis v. United States*, 136 S. Ct. 1083, 1097 (2016) (Thomas, J., concurring in the judgment) (quoting A.

[8] The Commission recognizes the possibility that there could be potentially privileged information or documents commingled amongst other relevant, non-privileged materials in the possession of Defendants—particularly in electronically stored information, where files are typically stored in a digital format on computer hard drives in a non-contiguous manner. To account for this possibility, the Proposed SRO provides that the Commission should undertake reasonable measures to prevent review of the Defendants' privileged communications and/or other nonbusiness, nonfinancial materials by the Commission's attorneys and other staff who are part of the litigation team in this matter. It further provides that Defendants shall promptly contact Commission's counsel to assert any claims of privilege or other legal objections relating to the contents of any records that are subject to this Order and promptly cooperate with Commission's counsel to develop reasonable protocols to isolate and prevent disclosure of claimed privileged and/or other nonbusiness, nonfinancial materials to the Commission's attorneys and other staff who are part of the litigation team in this matter. However, the Proposed SRO specifically states that none of the above-described provisions excuse the Defendants from full and immediate compliance with the SRO permitting Plaintiff to inspect the books and records.

Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 192 (2012) (discussing the "predicate-act canon")); *see also id.* ("'[W]henever a power is given by a statute, everything necessary to the making of it effectual or requisite to attain the end is implied'" (quoting 1 J. Kent, Commentaries on American Law 464 (13th ed. 1884))); *cf. McCulloch v. Maryland*, 17 U.S. (4 Wheat) 316, 409–10 (1819) ("The government which has a right to do an act, and has imposed on it, the duty of performing that act, must, according to the dictates of reason, be allowed to select the means . . . ."). A provision authorizing the Commission to copy records is a necessary predicate to the Commission's ability to inspect that will ensure important records related to Defendants' relevant conduct and customer funds are not destroyed and allow Commission representatives to have a real and meaningful opportunity to inspect, review, and carefully analyze all such records. Such relief is consistent with the strong policy enunciated by Congress, "to prevent any possible destruction of evidence and conversion of assets." H.R. Rep. No. 97-565, at 53–54. This relief is particularly appropriate here given that Defendants are not registered with the Commission and therefore are under no regulatory obligation to maintain records that may be material to determining the full extent of the violative conduct. Numerous courts have previously authorized copying of records in similar ex parte circumstances. *See, e.g.*, *CFTC v. Khara*, No. 15 cv 03497, 2015 WL 10849125, at *4 (S.D.N.Y. May 5, 2016); *CFTC v. RFF GF, LLC*, No. 4:13–cv–382, 2013 WL 4083748, at *4 (E.D. Tex. Jul. 9, 2013); *CFTC v. Vishnevetsky*, No. 1:12–cv–03234, 2012 WL 2930302, at *3 (N.D. Ill. May 1, 2012).[9]

[9] The Proposed SRO also contains various provisions related to ensuring the effectiveness of the asset freeze

Third, the Proposed SRO appoints a temporary receiver. 7 U.S.C. § 13a-1(a) specifically authorizes the CFTC to seek, and the Court to grant, a restraining order which provides for the ex parte appointment of a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate. Federal courts in Florida have appointed temporary receivers under circumstances similar to those presented here. *CFTC v. Offshore Financial Consultants of Florida, Inc.*, No. Civ.A. 02-60769, 2002 WL 1788031 (S.D. Fla. June 5, 2002) (granting CFTC's ex parte motion for entry of statutory restraining order freezing assets, appointing a temporary receiver and prohibiting destruction of records); *CFTC v. First Bristol Group, Inc.*, No. 02-61160, 2002 WL 31357411 (S.D. Fla. August 20, 2002) (same).

B. The Commission Has Established that Ex Parte Relief Is Necessary and Appropriate Here

The Proposed SRO is necessary in this case in order to prevent Defendants and Relief Defendants from dissipating assets and destroying or preventing access to their books and records. As explained above, there is substantial evidence that Defendants have engaged in and continue to engage in a scheme to defraud pool participants in the Oasis Pools and misappropriate funds from these pool participants. As described above and in the Robinson Declaration, Defendants have collected over $75 million from pool participants during the Relevant Period. Defendants used approximately $28 million of this money to make Ponzi

---

and inspection and preservation of records, such as one requiring Defendants to identify the location of, and necessary passwords to access the records, one giving notice to financial institutions about the asset freeze, and one allowing a designated law enforcement official to assist CFTC staff with service of process and maintain lawful order.

payments and misappropriated over $18 million by purchasing homes and cars for themselves, paying for unauthorized personal and business expenses, and transferring large sums of money to the Relief Defendants.

The fact that Defendants have engaged in such large-scale misappropriation of pool funds, as detailed in the Robinson Declaration, is sufficient reason to freeze the assets of Defendants and Relief Defendants. In addition, Defendants continue to engage in their fraudulent scheme by soliciting prospective pool participants and continuing to misappropriate pool funds. Absent immediate injunctive relief, and if Defendants or Relief Defendants were given notice of this motion and the requested relief, Defendants and Relief Defendants may further dissipate or shield fraudulently-obtained assets. In addition, the Commission needs to ensure that what assets remain are available to satisfy any such equitable remedies the Court may later award to the victims of Defendants' fraud. A statutory restraining order to temporarily freeze assets is appropriate in such circumstances. *See CFTC v. Levy*, 541 F.3d 1102, 1114 (11th Cir. 2008) ("[A] district court may freeze a defendant's assets to ensure the adequacy of a disgorgement remedy.").

Federal district courts in Florida have recognized that the type of ex parte relief the Commission seeks here is necessary under these circumstances. "The Act clearly permits district courts to issue restraining orders and asset freezes and the legislative history of the Act clearly demonstrates that Congress intended an asset freeze to preserve the status quo pending trial." *CFTC v. E-Metal Merchants, Inc.*, No, 05-21571-CIV-Lenard/Klein, 2005 WL 8155180 at *10 (S.D. Fla. July 27, 2005) (internal citations omitted).

Preventing destruction of records is similarly critical in this case. As described above, there is evidence suggesting that Defendants have been engaging in their fraudulent scheme for over five years. Defendants are likely in possession of records that identify all pool participants in the Oasis Pools, the amounts contributed by each pool participant and the dates of those contributions, as well as other records that establish the scope, duration, and operation of this fraudulent scheme. Relief Defendants may be in possession of records regarding the transfers of pool funds they received from Defendants, the sources of those funds, and other evidence showing that they have no legitimate claim to those funds. Given that these critical documents are all in the possession of Defendants and Relief Defendants, and that Defendants and Relief Defendants can easily destroy these documents (and have a strong incentive to do so if they become aware of imminent enforcement action by the Commission), the Commission needs an order preserving these records and making them accessible at the outset of this litigation, without notice to Defendants. *See CFTC v. Heierle*, No. 07-22396-CV, 2007 WL 4351424 at *4 (S.D. Fla. Sept. 12, 2007) (finding good cause for entry of an order restraining defendants and relief defendants from destroying records and allowing CFTC to inspect and copy records). Absent immediate access, Defendants would have an opportunity to frustrate Commission efforts to identify victims of the fraud, hold Defendants liable for the full extent of their wrongdoing, and provide redress to all victims of Defendants' fraud.

A temporary receiver is also necessary in this case, given the size and scope of Defendants' fraudulent scheme and their other business activities and the number of corporate entities owned by DaCorta and Anile that are involved in the fraud in some way.

The appointment of a receiver is particularly appropriate in cases such as this where a corporation, through its management, has defrauded members of the investing public. *SEC. v. First Financial Grp. of Texas*, 645 F.2d 429, 438 (5th Cir. 1981). As set forth in the Robinson Declaration, DaCorta and Anile own a number of entities that have a wide variety of business operations and hold assets, and they pervasively commingled funds among the accounts of Defendants, Relief Defendants, and other entities owned by Defendants (DaCorta and Anile). Appointing a receiver will help ensure that all available pool funds, and any assets obtained using pool funds, can be used to provide redress to Oasis Pool participants.

In addition, because there may not be enough funds available to fully compensate all of the victims of Defendants' fraud, a receiver will facilitate the marshaling of assets and the claims process and ensure that all investors are treated equitably. Under the Proposed SRO, the receiver will be able to accomplish this goal by maintaining the status quo and preventing diversion and waste of assets to the detriment of the Oasis Pool participants. *See CFTC v. Morgan, Harris & Scott Ltd*., 484 F. Supp. 669, 677 (S.D.N.Y. 1979) (appointing a receiver to prevent diversion or waste of defendants' assets).

C. The Court Should Order Expedited Discovery in Advance of the Preliminary Injunction Hearing

The Commission also seeks a provision in the Proposed SRO allowing the parties to conduct expedited discovery in advance of a hearing on the Commission's Motion for Preliminary Injunction. More specifically, the Commission seeks the ability to take depositions of parties and non-parties subject to two calendar days' notice pursuant to Fed. R. Civ. P. 30(a) and 45, with notice given personally, by facsimile or by electronic mail, and, if necessary, the deposition may last more than seven hours. Such expedited discovery will

allow the Commission to determine the full extent of Defendants' wrongdoing (including, but not limited to, the possible involvement of others), locate other Oasis Pool participants, identify Defendants' and Relief Defendants' funds, assets and other property, and clarify the sources of funds, assets, and other property in advance of a hearing on the Commission's Motion for Preliminary Injunction upon the expiration of the Proposed SRO.

Fed. R. Civ. P. 26(d) grants a trial court discretion to order expedited discovery where good cause is shown. *See CFTC v. Heierle*, No. 07-22396-CIV, 2007 WL 4351424 at *5 (S.D. Fla. Sept. 12, 2007) (finding good cause for entry of an order to permit discovery before the early meeting of counsel pursuant to Rule 26(d) of the Federal Rules of Civil Procedure, in order to ascertain the existence and location of assets and identify all pool participants and other investors). *See also CFTC v. Sonoma Trading Corp.*, No. 05-60342, 2005 WL 3742849 at *2 (S.D. Fla. March 9, 2005) (entry of an *ex parte* statutory restraining order authorizing "expedited discovery"); *CFTC v. First Bristol Group, Inc.*, No. 02-61160, 2002 WL 31357411 at *7 (S.D. Fla. August 20, 2002) (entry of an ex parte statutory restraining order granting parties and the temporary receiver leave, at any time after service of the order, to take the deposition of and demand the production of documents from any person or entity, with forty-eight hours' notice for depositions and five days' notice for production of documents deemed sufficient). Expedited discovery is warranted where, as in this case, the scope of Defendants' wrongful conduct must be uncovered so that irreparable injury can be avoided. *See Regal-Beloit Corp. v. Drecoll*, 955 F. Supp. 849 (N.D. Ill. 1996). Expedited discovery is particularly appropriate when a plaintiff seeks injunctive relief because of the expedited nature of injunctive proceedings. *Philadelphia Newspapers, Inc. v.*

Gannett Satellite Info. Network, Inc., No. 98-CV-2782, 1998 WL 404820, at *4 (E.D. Pa. July 15, 1998).

D. The Court Should Thereafter Issue an Order of Preliminary Injunction

The CFTC may obtain a preliminary injunction under 7 U.S.C. § 13a-1(a), if it shows that a person violated and is likely to continue violating the CEA, the latter of which "may be inferred from past unlawful conduct." *CFTC v. British Am. Commodity Options Corp*., 560 F.2d 135, 142 (2d Cir. 1977). The CFTC need not show irreparable injury; rather, the CFTC must only demonstrate: 1) a violation of the Act; and 2) a reasonable likelihood of future violations. *CFTC v. Oystacher*, No. 15-CV-9196, 2016 WL 3693429, at *6 (N.D. Ill. July 12, 2016).

Here, the evidence discussed above is sufficient to establish that Defendants have violated and are likely to continue to violate the Act and Regulations unless enjoined by the Court. Therefore, based on the evidence and arguments set forth in Commission's Emergency Ex Parte Motion for a Statutory Restraining Order, Preliminary Injunction, and Other Equitable Relief, the Commission requests that the Court enter a preliminary injunction under 7 U.S.C. § 13a-1(a) that enjoins Defendants from further violating the Act and Regulations and continues the equitable relief granted in the Proposed SRO—including the freeze on the assets of Defendants and Relief Defendants—and extends the appointment of the Temporary Receiver with the same powers as set forth in the Proposed SRO.

V. CONCLUSION

The Commission has made a prima facie showing that since at least 2011 and continuing to the present, Defendants have engaged, are engaging, or are about to engage in a

fraudulent scheme in violation of federal laws. New and current pool participants are funneling thousands of dollars each month into Defendants' scheme based on Defendants' misrepresentations that pool funds will be used to trade forex and that pool participants will receive a minimum 12% annual return. The Commission hereby requests entry of the Proposed SRO, which will immediately stop this fraud and preserve the status quo pending a hearing regarding entry of a preliminary injunction. Without the relief requested herein, Defendants may move pool participants' funds offshore and out of the reach of a U.S. court.

Dated: April 15, 2019

Respectfully submitted,

COMMODITY FUTURES TRADING COMMISSION

By: /s/ Jo Mettenburg
Jo E. Mettenburg, jmettenburg@cftc.gov
TRIAL COUNSEL
Jennifer J. Chapin, jchapin@cftc.gov
J. Alison Auxter, aauxter@cftc.gov
Attorneys for Plaintiff
COMMODITY FUTURES TRADING COMMISSION
4900 Main Street, Suite 500
Kansas City, MO 64112
(816) 960-7700
(816) 960-7751 (fax)