

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

BURTON W. WIAND, not individually  
but solely in his capacity as Receiver  
for OASIS INTERNATIONAL  
GROUP, LIMITED, *et al.*,

Plaintiff,

v.

ATC BROKERS, LTD., DAVID  
MANOUKIAN, and SPOTEX LLC,

Defendants.

CASE NO. 8:21-cv-01317-MSS-AAS

**DEFENDANT, SPOTEX, LLC'S, MOTION TO DISMISS  
COMPLAINT PURSUANT TO RULE 12(b)(2) and 12(b)(6)**

Spotex LLC (“**Spotex**”) moves to dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(2) and 12(b)(6) because: (1) this Court lacks personal jurisdiction over Spotex, a Delaware limited liability company with offices in New Jersey; (2) the Receiver lacks standing to assert aiding and abetting claims against Spotex because his own allegations establish that the Receivership Entities<sup>1</sup> were controlled exclusively by the CFTC Defendants engaging in and benefitting from the Ponzi scheme, and the Receivership Entities were not injured by that scheme; (3) the Complaint fails to state aiding and abetting claims on which relief can be granted; (4) the Complaint fails to state negligence claims on which relief can be granted; (5) the Communication Decency Act (“**CDA**”) establishes immunity as to Spotex because Spotex is a passive interactive computer service; and (6) the Complaint is a shotgun pleading because it fails to specify what actions Spotex is responsible for as it pertains to the alleged fraud or negligence.

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<sup>1</sup> Unless otherwise defined in this Motion, capitalized terms used herein shall have the meanings ascribed to such terms in the Complaint (Doc. 1).

### **PRELIMINARY STATEMENT**

Spotex is a Delaware limited liability company. Its operations are in the State of New Jersey. Its principal place of business is in the State of New Jersey. Spotex is a passive interactive online service that provided a platform for ATC Brokers Ltd. (“**ATC**”). The claims in the Complaint are based on the CFTC Defendants’ use of the Oasis Entities to perpetrate a Ponzi scheme. Burton W. Wiand (the “**Receiver**”) asserts that Spotex created the software platform that the CFTC Defendants used to conduct the fraudulent trading at the center of the Ponzi scheme.

Notably, the Complaint fails to specify what actions or omissions Spotex is responsible for as it pertains to the alleged fraud or negligence. The Complaint merely states that “Spotex provided a ‘white label’ software suite that would support ATC’s clients and generate online account records[.]” Complaint, Doc. 1, at ¶95. Providing software technology services and support related to that technology is not fraudulent or negligent, even if end users of that software use the technology unlawfully. Indeed, Spotex is the precise type of passive computer platform that the so-called “safe harbor” pursuant to the CDA was designed by Congress to protect. The Receiver fails to allege any facts which would tend to plausibly establish that Spotex aided and abetted the Ponzi scheme or was negligent in connection therewith. Further, because Spotex is simply a passive service provider, the CDA establishes immunity as to Spotex.

### **STATEMENT OF FACTS**

On May 28, the Receiver filed a Complaint against ATC, David Manoukian (“**Manoukian**”), and Spotex asserting the following claims: (1) aiding and abetting fraud against all defendants; (2) aiding and abetting breach of fiduciary duties against all defendants; (3-5) fraudulent transfers against ATC; (6) gross negligence against all defendants; and (7) simple

negligence against all defendants. The claims are predicated on the CFTC Defendants' use of the Receivership Entities to perpetrate a Ponzi scheme. *See, e.g.*, Complaint, Doc. 1, at ¶¶ 1, 2, 4-7, 12, 40-47, 56 and 61. Specifically, the Receiver alleges that Oasis International Group, Limited (“**OIG**”) was formed by Anile, DaCorta, and Montie and that they owned, controlled, and operated OIG. *Id.* at ¶14. The Receiver also alleges that “the CFTC Defendants operated the Oasis Entities [inclusive of the Receivership Entities] as a Ponzi scheme with OIG as the principal entity used to perpetrate the Ponzi scheme.” *Id.* at ¶ 40. The Receiver also refers to “Oasis (*i.e.*, Anile and DaCorta)” and alleges that “the CFTC Defendants had domination and influence over the Oasis Entities”. *Id.* at ¶¶ 111 and 122. Finally, the Receiver alleges that DaCorta and Anile were the sole signatories on, and sole authorized traders of, the subject Oasis trading accounts. *Id.* at ¶¶ 88 and 92.

The Complaint alleges that ATC “was the exchange firm for the doomed forex trading underlying the Oasis Ponzi scheme and ultimately for more than \$21 million of investor-derived investments in two commodity pools for OGNZ (“**Oasis Pool 1**”) and OGBelize (“**Oasis Pool 2**”) which operated out of Florida.” *Id.* at ¶ 32. “The Oasis Entities could not engage in any forex transactions without a forex firm that would open forex accounts for them and provide them with liquidity to trade on leverage. ATC was a firm that provided these services....” *Id.* at ¶ 64.

“Spotex created the software that DaCorta used to conduct the doomed forex trading, meaning Spotex provided the electronic trading platform that was necessary to carry out the Ponzi scheme.” *Id.* at ¶ 34. “[T]he Oasis Entities could not engage in any forex transactions without a ‘white label’ software suite that would support the Oasis Entities and general online account records with various back-office tasks. Spotex, through their affiliation with ATC, was a firm that provided the technology for these services to ATC clients such as Anile, DaCorta, and other Oasis

representatives.” *Id.* at ¶ 65. “ATC, Manoukian, and Defendant Spotex also played a key role in the presentation of fraudulent website data to Oasis investors.” *Id.* at ¶¶ 94. Spotex allegedly provided the CFTC Defendants with various back-end/back-office reports that would and did manipulate via back-end/back-office “adjustments” trading losses into fictitious trading profits and would populate the fictitious profits (and remove the losses) to the online portal viewable by investors, allegedly evidenced by a July 13, 2018 e-mail from Manoukian to Spotex regarding a margin upload request. *Id.* at ¶¶95-113. The Receiver alleges Spotex’s statement that, “adjustments can be uploaded for required accounts into our back-office,” demonstrates the “Defendants” “knew about, assisted, participated, supervised, enabled, and ensured the successful completion of automating the back-end/back-office ‘adjustments’ to conceal the trading losses from investors and populate false/fictitious profits to them.” *Id.* at ¶¶106 and 109. In reality, the most that can be said about that statement is that it is an accurate reflection of the technical capabilities of the Spotex platform – a far cry from the connective glue joining Spotex to an illicit criminal conspiracy that the Receiver will undoubtedly spin it as in opposition.

At the same time, the Receiver’s allegations concerning the extent of Spotex’s knowledge about the Ponzi scheme is a moving target. At times, the Receiver alleges that Spotex “knew or should have known”. *Id.* at ¶¶ 69, 71, 73-77, and 83-84. On others, the Receiver alleges that Spotex “knew, w[as] generally aware, w[as] reckless in not knowing, or alternatively, should have known that a Ponzi scheme was occurring....” *Id.* at ¶ 113. On four other occasions, however, the Receiver alleges that Spotex “actually knew.” *Id.* at ¶¶ 100, 107, 109, and 116. This begs the question—which is it? Under no construction of the federal pleading requirements can such haphazard and unreconcilable theories about a central theory of the Receiver’s case survive a motion to dismiss.

Against this backdrop, the Receiver alleges that the “Defendants had actual knowledge of the loss of all funds traded in forex trading, the failure to generate any trading profits to return to investors, the failure to transfer any funds back to the Oasis Entities, and the creation of false investor account records that hid massive trading losses and populated false profits, and Defendants substantially assisted or participated in such fraud.” *Id.* at ¶¶ 116 and 126. Defendants also allegedly breached their “duties of care to administer the ATC accounts for the Oasis Pools in accordance with, as opposed to in violation of, minimum industry standards for forex exchanges and providers of FX ECN-based technology.” *Id.* at ¶¶ 148 and 156.

On July 29, 2021, Spotex met-and-conferred with the Receiver concerning its contemplated motion to dismiss pursuant to M.D. Fla., Local Rule 3.01(g)(1) and urged the Receiver to voluntarily dismiss it as a party to this action with prejudice based on the legal issues outlined herein (“**Spotex Letter**”). (Declaration of Matthew S. Adams, dated August 20, 2021, (“**Adams Decl.**”) at Exhibit (“**Ex.**”) 1). Spotex suggested that the Receiver file an Amended Complaint correcting the deficiencies noted in the Spotex Letter in order to avoid the time and expense associated with Spotex’s Motion to Dismiss. *Id.* In response to Spotex’s good faith efforts to resolve this matter without the necessity for court intervention, counsel for the Receiver stated that Spotex should proceed with the filing of its intended response to the Complaint. (Adams Decl., at Ex. 2). Unfortunately, the Receiver failed to engage in a dialogue concerning the legal issues raised in the Spotex Letter or to substantively respond thereto, thereby necessitating this motion practice. That failure to substantively engage on the part of the Receiver can only be construed as an acknowledgement that no amendment can remedy the legal deficiencies noted as to the allegations in the Complaint against Spotex.

### **STANDARD OF REVIEW**

To survive a motion to dismiss pursuant to Rule 12(b)(6), a complaint must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A complaint will not survive a motion to dismiss pursuant to Rule 12(b)(6) if “it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Id.* (quoting *Twombly*, 550 U.S. at 557).

The Court has a “duty to accept the facts in the complaint as true,” but that “does not require [it] to ignore specific factual details of the pleading in favor of general or conclusory allegations.” *Griffin Indus., Inc. v. Irvin*, 496 F.3d 1189, 1205–06 (11th Cir. 2007). If a complaint “is wholly devoid of factual allegations suggesting” a defendant’s “purposeful involvement in the allegedly fraudulent” conduct, the complaint fails to state a claim for fraud. *Cisneros v. Petland, Inc.*, 972 F.3d 1204, 1213 (11th Cir. 2020). Because the “threshold question in any claim of negligence is the existence of a duty of care owed by the defendant to the plaintiff,” if a complaint fails to allege facts sufficient to demonstrate the existence of such a duty, the complaint fails to state a claim for negligence. *In re Palm Beach Fin. Partners, L.P.*, 517 B.R. 310, 325 (Bankr. S.D. Fla. 2013).

### **LEGAL ARGUMENT**

The Receiver’s Complaint must be dismissed with prejudice because: (1) this Court lacks personal jurisdiction over Spotex, a Delaware limited liability company with operations in New Jersey; (2) the Receiver lacks standing to assert aiding and abetting claims against Spotex because his own allegations establish that the Receivership Entities<sup>2</sup> were controlled exclusively by the

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<sup>2</sup> Unless otherwise defined in this Motion, capitalized terms used herein shall have the meanings ascribed to such terms in the Complaint (Doc. 1).

CFTC Defendants engaging in and benefitting from the Ponzi scheme, and the Receivership Entities were not injured by that scheme; (3) the Complaint fails to state aiding and abetting claims on which relief can be granted; (4) the Complaint fails to state negligence claims on which relief can be granted; (5) the CDA establishes immunity as to Spotex because Spotex is a passive interactive computer service; and (6) the Complaint is a shotgun pleading because it fails to specify what actions Spotex is responsible for as it pertains to the alleged fraud or negligence.

**1. This Court Lacks Personal Jurisdiction Over Spotex**

The right to be free from the improper exercise of personal jurisdiction is a fundamental liberty interest protected by the Constitution's Due Process Clause. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, n.13 (1985). The Due Process Clause limits the power of a court to exercise personal jurisdiction over a nonresident defendant to instances where there are sufficient "minimum contacts" between the defendant and the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice and the defendant has "purposefully availed itself" of the privilege of conducting activities directed at the forum state so that he could reasonably expect to be haled into the courts of the forum state to answer for his alleged conduct. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980); *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945). Purposeful availment requires that the non-resident defendant engage in activity that is "purposefully directed" at the target state, *Asahi Metal Industry Co., Ltd. v. Superior Court*, 480 U.S. 102, 112 (1987), or "expressly aimed" and "intentionally directed" at forum residents. *Calder v. Jones*, 465 U.S. 783, 789–790 (1984). Due process is not satisfied where the nonresident defendant has insubstantial contacts with the forum state or where those contacts are fortuitous, random or attenuated or the result of unilateral acts of third parties. *Burger King*, 471 U.S. at 475.

Whether this Court has personal jurisdiction over nonresident Spotex is determined by the law of the state in which this Court sits. *Jet Charter Serv., Inc. v. Koeck*, 907 F.2d 1110, 1112 (11th Cir. 1990); *Prentice v. Prentice Colours, Inc.*, 779 F. Supp. 578, 581 (M.D. Fla. 1991). In Florida, a court must conduct a two-part analysis when deciding whether it has personal jurisdiction over a nonresident defendant. *Sculptchair, Inc. v. Century Arts, Ltd.*, 94 F.3d 623, 626 (11th Cir. 1996); *Venetian Salami Co. v. J.S. Parthenais*, 554 So. 2d 499, 502 (Fla. 1989). First, the court must determine whether the Florida long-arm statute provides a basis for personal jurisdiction over the nonresident defendant. *Sculptchair, Inc.*, 94 F.3d at 626. If the requirements of the statute are satisfied, the court must then determine whether sufficient minimum contacts to satisfy due process exist between Florida and the defendant such that the exercise of the court’s jurisdiction over the nonresident defendant would not offend “traditional notions of fair play and substantial justice.” *Id.*

Florida’s long-arm statute provides that a nonresident defendant can be subject to the jurisdiction of the courts of the state if the defendant commits a tortious act within this state. See Fla. Stat. § 48.193(1)(b). The Complaint generally alleges personal jurisdiction over Spotex because, “pursuant to Florida Statute § 48.193(1)(a)(2), [D]efendants committed tortious acts which touched, concerned, and affected the operations of OIG and the other Receivership Entities in Florida.” Doc. 1 at ¶36. As discussed in further detail below, Spotex strongly denies that it committed any tortious acts. However, even if it did, and even if those acts affected operations in Florida, sufficient minimum contacts to satisfy due process do not exist between Florida and Spotex.

When an intentional tort is involved, courts use the *Calder* “effects” test to determine if minimum contacts have been met. *Navitar, Inc. v. eScholar, LLC*, No. 11-CV-20266-PAS, 2011



WL 13223668, at \*2 (S.D. Fla. July 7, 2011) (citing *Licciardello v. Lovelady*, 544 F.3d 1280, 1285-86 (11th Cir. 2008)). The *Calder* test requires a tort that was (1) intentional; (2) aimed at the forum state; and (3) caused harm that the defendant should have anticipated would be suffered in the forum state. *Id.*

Here, there are no facts that support the notion that Florida has personal jurisdiction over Spotex. The Complaint acknowledges that “Spotex is a Delaware limited liability company with an office in New Jersey [and that] none of Spotex’s members are citizens of Plaintiff’s residence of Florida.” Doc. 1 at ¶23. The Complaint further states that the Court has personal jurisdiction over Spotex because it “created the software that DaCorta used to conduct the doomed forex trading, meaning Spotex provided the electronic trading platform that was necessary to carry out the Ponzi scheme. Spotex maintained back-door accounts for OIG and the Oasis Pools through www.spotex.com.” Doc. 1 at ¶34. However, the Complaint is completely devoid of allegations that Spotex intentionally aimed any tortious conduct at Florida or that Spotex could have possibly anticipated anyone in Florida would suffer. *See Navitar, Inc. v. eScholar, LLC*, No. 11-CV-20266-PAS, 2011 WL 13223668, at \*2-3 (S.D. Fla. July 7, 2011) (an action against a computer software company that offered a software application was dismissed for lack of personal jurisdiction because the company’s business activities relating to the software were not specifically directed at Florida); *See also Vision Media TV Group, LLC v. Forte*, 724 F. Supp. 2d 1260 (S.D. Fla. 2010) (the court held that it lacked personal jurisdiction over the defendants, an individual and her LLC, who maintained a website on which she and the public could post comments about companies linked to 800 phone numbers because there was no evidence that the website targeted Florida or that the defendants aimed their conduct at Florida). Accordingly, Spotex’s contacts with Florida are not sufficient to satisfy due process and this Court lacks personal jurisdiction over Spotex. (See

Declaration of Chris Mitchell, dated August 19, 2021, at ¶ 4-6).

**2. The Receiver Lacks Standing Because the Corporations he Stands in the Shoes of Did Not Suffer Injury From the Scheme they Perpetrated**

The Receiver lacks standing to assert aiding and abetting claims against Spotex because his own allegations establish that the Receivership Entities<sup>3</sup> were controlled exclusively by the CFTC Defendants engaging in and benefitting from the Ponzi scheme, and the Receivership Entities were not injured by that scheme. Specifically, the Receiver alleges that OIG was formed by Anile, DaCorta, and Montie and that they owned, controlled, and operated OIG. *Id.* at ¶14. The Receiver also alleges that “the CFTC Defendants operated the Oasis Entities [inclusive of the Receivership Entities] as a Ponzi scheme with OIG as the principal entity used to perpetrate the Ponzi scheme.” *Id.* at ¶ 40. The Receiver then refers to “Oasis (*i.e.*, Anile and DaCorta)” and alleges that “the CFTC Defendants had domination and influence over the Oasis Entities”. *Id.* at ¶¶ 111 and 122. Finally, the Receiver alleges that DaCorta and Anile were the sole signatories on, and sole authorized traders of, the subject trading accounts. *Id.* at ¶¶ 88 and 92.

A “receiver is limited to bringing only those actions previously owned by the party in receivership.” *Isaiah v. JPMorgan Chase Bank*, 960 F.3d 1296, 1306 (11th Cir. 2020). “The corporation—and the receiver who stands in the shoes of the corporation—lacks standing to pursue” tort claims against a third-party “because the corporation, ‘whose primary existence was as a perpetrator of the Ponzi scheme, cannot be said to have suffered injury from the scheme it perpetrated.’” *Id.* at 1306 (quoting *O’Halloran v. First Union Nat’l Bank of Fla.*, 350 F.3d 1197, 1203 (11th Cir. 2003)).

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<sup>3</sup> Unless otherwise defined in this Motion, capitalized terms used herein shall have the meanings ascribed to such terms in the Complaint (Doc. 1).

In *Isaiah*, the receiver sought to recover from JPMorgan Chase Bank funds that were fraudulently diverted from the receivership entities' bank accounts in connection with a Ponzi scheme. *Id.* at 1300. The Complaint in *Isaiah* depicted the receivership entities "as the robotic tools of the Ponzi schemers, alleging that the Ponzi schemers 'asserted complete control over the Receivership Entities in operating the Ponzi Scheme and improperly diverting funds from the bank accounts of the Receivership Entities.'" *Id.* at 1307. The receivership entities "were wholly dominated by persons engaged in wrongdoing" and the complaint was "devoid of any allegation that the Receivership Entities engaged in any legitimate activities." *Id.* The court in *Isaiah* therefore held that "the Ponzi schemers' torts [could not] properly be separated from the Receivership Entities, and the Receivership Entities [could not] be said to have suffered any injury from the Ponzi scheme that the Entities themselves perpetrated." *Id.* The "claims for aiding and abetting the torts of the Receivership Entities' corporate insiders" accordingly belonged "to the investors who suffered losses from this Ponzi scheme, not the Receivership Entities." *Id.* The receivership entities thus could not "assert tort claims against third parties like JPMC for aiding and abetting the Ponzi scheme." *Id.* at 1307-1308. Because the receiver stood "in the shoes of the Receivership Entities, he too lack[ed] standing to bring the[] aiding and abetting claims against JPMC." *Id.* at 1308.

Here, the Receiver alleges that "OIG was a Cayman Islands limited corporation formed by Anile, DaCorta and Montie in or around March 2013. Anile, DaCorta and Montie owned and controlled OIG and served on its Board of Directors." Doc. 1 at ¶ 14. Anile has pled guilty to running a Ponzi scheme. *Id.* ¶ 5. DaCorta has been indicted for running a Ponzi scheme. *Id.* ¶ 6. The Receiver has sued Montie for conduct in relation to running a Ponzi scheme. *See Wiand v. Montie*, No. 8:20-cv-00863-TPB-SPF (M.D. Fla. Apr. 14, 2020). All three persons who "owned

and controlled OIG” are named in the CFTC Complaint underlying this action for perpetrating a Ponzi scheme. *See CFTC v. Oasis International Group, Ltd.*, Case No. 8:19-cv-00886-VMC-SPF (M.D. Fla). Because the Receiver alleges that Anile, DaCorta and Montie were the “owners and controllers” of the Ponzi- scheme entities “[t]he corporation—and the receiver who stands in the shoes of the corporation—lacks standing to pursue such tort claims” as it does in this action. *Isaiah*, 960 F.3d at 1306.

Because the Receiver’s own allegations establish that control of the unlawful acts were vested in the Receivership Entities, pursuant to *Isaiah*, the Receiver lacks standing to bring third-party tort actions.

### **3. The Complaint Fails to State Aiding and Abetting Claims on Which Relief can be Granted**

To assert a claim for aiding and abetting, the Complaint must sufficiently allege: (1) an underlying wrongdoing (fraud, breach of fiduciary duty); (2) actual knowledge by the defendant; and (3) substantial assistance. *See ZP No. 54 Ltd. P’ship v. Fid. & Deposit Co. of Md.*, 917 So. 2d 368, 372 (Fla. 5th DCA 2005) (noting the elements of aiding and abetting fraud); *In re Caribbean K Line, Ltd.*, 288 B.R. 908, 919 (S.D. Fla. 2002) (noting the elements of aiding and abetting breach of fiduciary duty). To state claims for aiding and abetting, the Complaint must allege that *each of the defendants*: (1) committed an underlying violation; (2) had actual knowledge of the illegal conduct; and (3) provided substantial assistance to the scheme. The aiding and abetting fraud cause of action is subject to the heightened pleading requirements of Fed. R. Civ. P. 9(b). *Groom v. Bank of America*, No. 8:08-cv-2567, 2012 WL 50250 at \*8 (M.D. Fla. Jan. 9, 2012) (Whittemore, J.).

In *Wiand v. Wells Fargo*, it was alleged that a man, Nadel, orchestrated a massive Ponzi scheme for ten years and that his management companies, Scoop Management, Inc. and Scoop Capital, LLC, raised in excess of \$350 million from unwitting investors, purporting to deposit the

money in a set of hedge funds. Burton Wiand, the same court-appointed Receiver as in this case, alleged that Wells Fargo Bank gained actual knowledge of Nadel's fraud and substantially assisted Nadel in stealing money from investors. The initial complaint was dismissed in part for failing to state a claim. Specifically, the Receiver's claims for aiding and abetting common law fraud (Count I), aiding and abetting breach of fiduciary duty (Count II), and aiding and abetting conversion (Count III) were dismissed without prejudice. The claims for fraudulent transfer against Wells Fargo and Best (Count V) and unjust enrichment against Wells Fargo only (Count VI) were upheld and the Receiver was granted leave to file an amended complaint. The Receiver then filed a 76–page, 282–paragraph First Amended Complaint, which was stricken sua sponte as a shotgun pleading. The Receiver was granted leave to file a second amended complaint and warned that failure to plead in a manner contemplated by Rule 8 could result in dismissal with prejudice. The Receiver filed his Second Amended Complaint and the defendants again moved to dismiss all of the claims and to strike certain allegations. *Wiand v. Wells Fargo Bank, N.A.*, 938 F. Supp. 2d 1238, 1242 (M.D. Fla. 2013).

The Court held that the Second Amended Complaint did not provide a plausible factual basis to conclude that the bank knew that an actual misappropriation was intended or was in progress. *Id.* at 1249. The Court further held that because the Receiver had failed to allege *actual knowledge* on the part of the bank, the Receiver's claims for (1) aiding and abetting common law fraud, (2) aiding and abetting breach of fiduciary duty, (3) aiding and abetting conversion and (4) common law negligence must all be dismissed. *Id.* at 1247.

As noted previously, the Receiver's allegations concerning the extent of Spotex's knowledge of the Ponzi scheme are contradictory throughout the Complaint. *Cf.* Doc. 1 at ¶ 113 (“Defendants knew, were generally aware, were reckless in not knowing, or alternatively, should

have known that a Ponzi scheme was occurring on their own watch through the ATC accounts”) and Doc. 1 at ¶¶ 69, 71, 73, 74, 75, 76, 77, 83, and 84 (Defendants “knew or should have known”) with Doc. 1 at ¶¶ 100, 107, 109, and 116 (Defendants “actually knew”). For this reason alone, the Receiver’s aiding and abetting claims should be dismissed.

Additionally, the aiding and abetting causes of action fail to state claims on which relief can be granted because the Receiver fails to plead facts sufficient to establish, beyond mere speculation, that Spotex had actual knowledge of the CFTC Defendants’ fraud or breach of fiduciary duty. The Receiver simply alleges in the Complaint that because Spotex stated, “adjustments can be uploaded for required accounts into our back-office,” that “Defendants” “knew about, assisted, participated, supervised, enabled, and ensured the successful completion of automating the back-end/back-office ‘adjustments’ to conceal the trading losses from investors and populate false/fictitious profits to them.” See Doc. 1 at ¶¶ 106 and 109. These allegations are conclusory and insufficient. Simply because Spotex knew adjustments could be uploaded into the back-office does not mean that Spotex could have possibly had actual knowledge that the back-office adjustments were being used to conceal trading losses from investors. See *Platinum Ests., Inc. v. TD Bank, N.A.*, No. 11-60670-CIV, 2012 WL 760791, at \*3 (S.D. Fla. Mar. 8, 2012) (conclusory statements that a defendant “actually knew” is insufficient to support an aiding and abetting claim where the facts in the complaint only suggest that the defendant “should have known that something was amiss.”); See also *Wiand v. Wells Fargo Bank, N.A.*, 938 F. Supp. 2d 1238, 1242 (M.D. Fla. 2013) (the complaint did not provide a plausible factual basis to conclude that the bank knew that an actual misappropriation was intended or was in progress and thus because the receiver failed to allege actual knowledge on the part of the bank, the receiver’s claims for (1) aiding and abetting common law fraud, (2) aiding and abetting breach of fiduciary duty, (3) aiding

and abetting conversion and (4) common law negligence were all due to be dismissed); *See, e.g., Lawrence v. Bank of America, N.A.*, No. 8:09-cv-2162, 2010 WL 3467501, at \*3-5 (M.D. Fla. Aug. 30, 2010) (Covington, J.), *aff'd*, 455 F. App'x 904 (11th Cir. 2012) (dismissing plaintiff's aiding and abetting breach of fiduciary duty and conversion claims in the context of Ponzi scheme because the plaintiff failed to adequately allege that defendant affirmatively assisted, concealed, or knowingly rendered substantial assistance to perpetrators in alleged commission of fraud, conversion, or breach of fiduciary duty).

The Receiver's allegations regarding "red flags" set forth at paragraphs 63 through 85 of the Complaint are also insufficient to adequately plead Spotex's actual knowledge under governing law. *See Groom*, *supra* at \*3 (dismissing aiding and abetting claims against bank because referenced 'red flags' did not constitute the conscious awareness of wrongdoing necessary to maintain an aiding and abetting cause of action); and *Lawrence*, *supra* at \*3 (noting that "a plaintiff's allegations that the defendants had ignored 'atypical activities' and other 'red flags' did not constitute the conscious awareness of wrongdoing necessary to maintain an aiding and abetting cause of action"). Importantly, the OIG operators and directors have never even alleged that Spotex had any knowledge of any wrongdoing or participated in any illegal conduct. (*See Adams Decl.*, at Ex. 3 and 4).

The Complaint also fails to plead facts sufficient to establish, beyond mere speculation, that Spotex knowingly rendered substantial assistance in the CFTC Defendant's commission of wrongdoing or that Spotex knowingly rendered substantial assistance in the commission of the wrongdoing. Significantly, the Receiver's allegations concerning Spotex's "failure to act," cannot constitute "substantial assistance" as a matter of law. *See Richter v. Wells Fargo Bank, N.A.*, No. 2:11-cv-695, 2015 WL 163086, at \*3 (M.D. Fla. Jan. 13, 2015) (Steele, J.) (citing *Hines v. FiServ*,

*Inc.*, No. 08-cv-2569, 2010 WL 1249838, at \*4 (M.D. Fla. Mar. 25, 2010)) and *Groom*, supra at \*4.

A defendant also does not provide substantial assistance unless his action, or inaction, was a “substantial factor in causing the [underlying violation].” *Richter*, supra at \*3 (citing *In re Palm Beach Fin. Partners, L.P.*, 517 B.R. 310, 348 (Bankr. S.D. Fla. 2013)). Thus, substantial assistance will not be found where “[t]he amount of assistance alleged is minor in comparison to the massive scope of [the] overall fraudulent scheme.” *Id.* Even assuming that the Receiver’s allegations and theory concerning the July 2018 e-mail communications set forth at paragraphs 105 and 106 of the Complaint are true, Spotex cannot be said to be a “substantial factor in causing the” fraud or breaches of fiduciary duty that allegedly occurred over a four year period between March 2015 and April 2019. Accordingly, the Complaint fails to state aiding and abetting claims on which relief can be granted and should be dismissed.

#### **4. The Complaint Fails to State Negligence Claims on Which Relief Can be Granted**

To maintain an action for negligence, a plaintiff must establish that the defendant owed a duty, that the defendant breached that duty, and that this breach caused the plaintiff damages. *Wiand*, supra at 1247 (citing *Fla. Dep’t of Corrs. v. Abril*, 969 So.2d 201, 204 (Fla. 2007)). “Florida law recognizes four sources of duties of care: statutes and regulations, judicial interpretations of legislation, judicial decisions, and duties arising from the facts of a particular case. See *Wiand v. Wells Fargo Bank, N.A.*, 86 F. Supp. 3d 1316, 1321 (M.D. Fla. 2015) (citing *Curd v. Mosaic Fertilizer, LLC*, 39 So. 3d 1216, 1227-28 (Fla. 2010)).

Just as the Court determined the Receiver’s allegations in *Wells Fargo* were insufficient (e.g., Wells Fargo allegedly had a duty to meet the standard of care in the banking industry and duty to investigate suspicious transactions made by customers), the Court should likewise find the



Receiver's allegations in this case to be insufficient to state negligence claims against Spotex on which relief can be granted (e.g., Defendants allegedly owed "duties of care to administer the ATC accounts for the Oasis Pools in accordance with, as opposed to in violation of, minimum industry standards for forex exchanges and providers of FX ECN-based technology"). *Wiand*, supra at 1324 and Doc. 1 at ¶¶ 148 and 156.

Just as a bank does not owe a duty to a non-customer, Spotex does not owe a duty to non-customers and the Receiver has not contended to the contrary. The Complaint makes clear that the "customers" in this matter were ATC's clients, not Spotex's clients. "Spotex provided a 'white label' software suite that would support ATC's clients and generate online account records with various back-office tasks for such clients. Spotex, through their affiliation with ATC, was a firm that provided the technology for these services to **ATC's clients**, such as Anile, DaCorta and other Oasis representatives." Doc. 1 at ¶95 (emphasis added). Spotex's only duty is to ATC, not ATC's customers. Spotex never owed any duties to the CFTC Defendants or the Oasis Entities. "Florida law recognizes four sources of duties of care: statutes and regulations, judicial interpretations of legislation, judicial decisions, and duties arising from the facts of a particular case. *See Wiand v. Wells Fargo Bank, N.A.*, 86 F. Supp. 3d 1316, 1321 (M.D. Fla. 2015) (citing *Curd v. Mosaic Fertilizer, LLC*, 39 So. 3d 1216, 1227-28 (Fla. 2010)). Accordingly, Spotex does not have the required duty for the Receiver to maintain a negligence cause of action against it in this matter.

Further, Manoukian's alleged wrongdoing, which Spotex also disputes, cannot be imputed to Spotex even if the claims were true. The Receiver has not alleged an agency relationship between Manoukian and Spotex. Spotex is a Delaware limited liability company. Like other jurisdictions, Delaware law considers the corporate business form, including a limited liability company, as an independent legal entity separate and distinct from its members. *Wood v. U.S.*

*Bank Nat'l Ass'n*, 246 A.3d 141, 148 (Del. Ch. 2021); (Del. C. § 18-201(b)). While courts have “acknowledged that under certain circumstances liability may be imputed to parties who did not actively participate in the alleged wrongdoing,” it is generally held that “those circumstances are limited to partnerships or agency relationships and do not extend to limited liability companies or corporations.” *In re Manke*, No. 9:15-BK-005370-FMD, 2018 WL 11206119, at \*4 (Bankr. M.D. Fla. June 4, 2018), *aff'd*, No. 2:18-CV-477-FTM-99, 2018 WL 6629957 (M.D. Fla. Dec. 19, 2018). To establish an agency relationship, a plaintiff must show: (1) acknowledgement by the principal that the agent will act for him; (2) the agent’s acceptance of the undertaking; and (3) control by the principal over the agent’s actions. Restatement (Second) of Agency § 1 (1957).

In *Ct. Appointed Receiver of Lancer Offshore, Inc. v. Citco Grp. Ltd.*, a receiver asserted claims for breach of fiduciary duty and negligence against three defendants. The court held that while the complaint contained sufficient individualized allegations against two of three defendants, the court could not see how the third defendant, CFS-USA, was “properly brought into the fold.” *Ct. Appointed Receiver of Lancer Offshore, Inc. v. Citco Grp. Ltd.*, No. 05-60080CIV, 2008 WL 926512, at \*5 (S.D. Fla. Mar. 31, 2008). The Receiver alleged that CFS-USA maintained a sophisticated software system that was used by the other defendants. The Receiver also alleged that William Keunen, the director of another defendant, was also a named officer of CFS-USA. However, the Receiver did not allege that Keunen took any actions on behalf of CFS-USA. The court held that having Keunen, as a named officer, in and of itself, was not enough to suggest direct participation in the scheme by CFS-USA. *Id.*

Because Spotex and its members, like Manoukian, are separate legal entities, for Spotex to be liable for Manoukian’s actions, the Receiver must demonstrate that Manoukian had an agency relationship with Spotex and acted on behalf of Spotex. Here, the Complaint is completely devoid

of allegations that Manoukian, a passive shareholder, was an agent of Spotex who had the authority to act on behalf of Spotex.

**5. The Communication Decency Act Establishes Immunity as to Spotex Because Spotex is a Passive Interactive Computer Service**

All claims against Spotex are also barred by the immunity provisions of the CDA, 47 U.S.C. § 230(c), because Spotex is a passive “interactive computer service.” Congress enacted the statute to protect interactive computer service providers, like Spotex, from liability for their users’ content and conduct. Here, the Receiver has failed to sufficiently allege that Spotex acted as an “information content provider” rather than an “interactive computer service.” *In re BitConnect Sec. Litig.*, No. 18-CV-80086, 2019 WL 9104318, at \*12 (S.D. Fla. Aug. 23, 2019).

The CDA states, in relevant part, that:

No provider or user of an interactive computer service shall be held liable on account of--

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

The term “interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

The term “information content provider” means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the internet or any other interactive computer service.

47 U.S.C.A. § 230(c).

If a service provider is in part responsible for the creation or development of content, “then it is an information content provider as to that content—and is not immune from claims predicated

on it.” *In re BitConnect Sec. Litig.*, No. 18-CV-80086, 2019 WL 9104318, at \*12 (S.D. Fla. Aug. 23, 2019) (citing *Am. Income Life Ins. Co. v. Google, Inc.*, No. 2:11-CV-4126-SLB, 2014 WL 4452679, at \*7 (N.D. Ala. Sept. 8, 2014)). To survive a motion to dismiss, a complaint must therefore allege that the defendant acted as an “information content provider.” *Id.* “Federal courts have interpreted the CDA to establish broad ‘federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service.’” *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006) (citing *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)).

In *In re BitConnect Sec. Litig.*, the complaint detailed the degree to which the defendants used YouTube to solicit investments for a Ponzi scheme. *In re BitConnect Sec. Litig.*, No. 18-CV-80086, 2019 WL 9104318 (S.D. Fla. Aug. 23, 2019). YouTube’s platform did indeed provide the defendants with an extraordinary reach to solicit investors. *Id.* at \*12. Several of the defendants were even alleged to have been designated as “Partners” through the “YouTube Partner Program.” *Id.* The Court, however, held that while participation in the “YouTube Partner Program” may have helped direct traffic to the defendants’ videos, the traffic alone is not sufficient to preclude § 230 immunity. Because YouTube was not “responsible, in whole or in part, for the creation or development” of the defendants’ videos, YouTube was not an “information content provider” and thus YouTube could not be held liable as a participant in the Ponzi scheme. *Id.* The Court clearly stated that “lawsuits seeking to hold a service provider liable for its exercise of a publisher’s traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred.” *Id.* (quoting *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)). Further, the Court held that while “YouTube may have had a moral or ethical responsibility to

protect its users from the defendants’ allegedly fraudulent schemes, *the plaintiffs’ claim that it had a legal duty to do so is preempted by the CDA.*” *Id.* at \*13. (Emphasis added).

In *Doe v Kik Interactive Inc.*, the plaintiff, a minor who used a mobile messaging service, brought an action against the owners and operators of the service under the Trafficking Victims Protection Act (TVPA), alleging that the owners and operators knew that sexual predators used its service to contact and solicit sexual activity with minors. *Doe v. Kik Interactive, Inc.*, 482 F. Supp. 3d 1242, 1249 (S.D. Fla. 2020). The plaintiff alleged that the defendants failed to provide any warnings or enact policies to protect minors. The mobile messaging service filed a motion to dismiss based on immunity and failure to state a claim pursuant to the CDA. The plaintiff argued that the mobile messaging service knew or should have known that the minor was being trafficked. The court held that the plaintiff’s claims against the defendants were barred by the immunity provisions of the CDA, 47 U.S.C. § 230, and dismissed the complaint. *Id.* at 1251. The court further held that Congress “enacted a statute protecting interactive computer service providers from liability for their users’ content and conduct.” *Id.* at 1250.

In *Mezey v. Twitter, Inc.*, a plaintiff sued Twitter for allegedly unlawfully suspending his Twitter account. *Mezey v. Twitter, Inc.*, No. 1:18-CV-21069-KMM, 2018 WL 5306769, at \*1 (S.D. Fla. July 19, 2018). Twitter moved to dismiss the complaint and argued that the CDA barred the plaintiff’s claims. In dismissing the complaint, the court found that “Twitter—as a platform that transmits, receives, displays, organizes, and hosts content—is an interactive computer service [and] Plaintiff is the information content provider as he created the relevant content associated with his Twitter account.” *Id.* at \*1.

Similarly, in *Kimzey v. Yelp! Inc.*, a business brought claims against an operator of a website that hosted online reviews and allowed users to rate businesses using its “star” ranking

system, alleging violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), the Washington Unfair Practices and Unfair Competition Act, and also alleging malicious libel and libel per se. In dismissing the complaint, the court held that it failed “to see how Yelp’s rating system, which is based on rating inputs from third parties and which reduces this information into a single, aggregate metric is anything other than user-generated data. Indeed, the star-rating system is best characterized as the kind of ‘neutral tool[ ]’ operating on ‘voluntary inputs’ that we determined did not amount to content development or creation” *Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1270 (9th Cir. 2016).

Finally, in *e360Insight, LLC v. Comcast Corp.*, an e-mail marketer brought an action against an internet service provider (ISP), alleging violations of the Computer Fraud and Abuse Act (CFAA), infringement of free speech, tortious interference with prospective economic advantage, and deceptive or unfair practices barred by the Illinois Consumer Fraud Act (ICFA) because the ISP used filters to control the volume of its e-mail and to block e-mails. The court granted judgment on the pleadings with respect to the complaint as a whole on the grounds that § 230(c) precluded proceeding on any of the claims against the ISP. *e360Insight, LLC v. Comcast Corp.*, 546 F. Supp. 2d 605, 609 (N.D. Ill. 2008).

Spotex, as a service provider, cannot be held liable for information originating with third-party users of the service including the Receivership Entities. Spotex simply provided a neutral software tool that was used improperly. Indeed, the Receiver’s own allegations establish that it was the fraudsters and criminals who created the deceitful content-not Spotex. The Receiver has not alleged that Spotex was responsible, in whole or in part, for the creation or development of the information provided on its software platform and, for this reason, his claims against Spotex are barred by the Communication Decency Act and should be dismissed.

**6. The Complaint is a Shotgun Pleading Because it Fails to Specify What Actions Spotex is Responsible For as it Pertains to the Alleged Fraud or Negligence**

A complaint must provide “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Rule 10(b) further requires a party to “state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances.” Fed. R. Civ. P. 10(b). “If doing so would promote clarity,” Rule 10(b) also mandates that “each claim founded on a separate transaction or occurrence ... be stated in a separate count ....” *Weiland v. Palm Beach Cnty. Sheriff’s Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015). The purpose of the rules is “to require the pleader to present his claims discretely and succinctly, so that[ ] his adversary can discern what he is claiming and frame a responsive pleading.” *Barmapov v. Amuial*, 986 F.3d 1321, 1324 (11th Cir. 2021) (citing *Weiland* at 1320).

The Eleventh Circuit has identified four categories of shotgun pleadings:

- (1) A complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint;
- (2) A complaint that is replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action;
- (3) A complaint that does not separate each cause of action or claim for relief into a different count;
- (4) A complaint that asserts multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against.

*Barmapov* at 1324–25 (affirming dismissal of complaint with prejudice as a shotgun pleading).

The Eleventh Circuit has made clear that it has “little tolerance” for shotgun pleadings because they “waste scarce judicial resources, inexorably broaden the scope of discovery, wreak havoc on appellate court dockets, and undermine the public’s respect for the courts.” *Id.* at 1324.

Just recently in 2021, the Eleventh Circuit emphasized its strong stance on shotgun pleadings:

Critics of this Circuit’s shotgun pleading case law may condemn the emphasis we place on form, but as I have explained, the form of pleadings imposes very real costs on courts, lawyers, and the rights of litigants. For over thirty-five years,

lawyers practicing in this Circuit have been aware of our stance on shotgun pleadings, and thus I have little sympathy for lawyers who draft slapdash complaints that are ultimately dismissed. Going forward, it is my hope that this opinion will serve as a guide for lawyers who truly seek to vindicate their client's rights—and avoid unfortunate outcomes for their clients—by filing clear, precise pleadings.

*Id.* at 1332.

Here, the Complaint contains multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint. The Complaint also fails to specify what actions Spotex is responsible for as it pertains to the alleged fraud or negligence and thus is a shotgun pleading. The Complaint makes it impossible to discern what the Receiver is claiming as to Spotex, thereby making it impossible for defense counsel to frame a responsive pleading. The Complaint fails to identify what acts or omissions Spotex is responsible for doing or not doing. *Id.* at 1325. The Complaint merely states that “Spotex provided a ‘white label’ software suites that would support ATC’s clients and generate online account records[.]” Doc. 1 at ¶95. Providing software technology services and support related to that technology is not fraudulent or negligent, even if end users of that software use the technology unlawfully. The Receiver fails to allege any actions by Spotex that support the elements necessary to support claims for Aiding and Abetting Fraud, Aiding and Abetting Breaches of Fiduciary Duties, Gross Negligence and Simple Negligence. The Complaint is a shotgun pleading and should be dismissed with prejudice.

### **CONCLUSION**

Spotex respectfully requests the Court enter an Order granting this Motion and dismissing the Complaint *with prejudice*. On July 29, 2021, Spotex urged the Receiver to voluntarily dismiss Spotex as a party to this action or alternatively file an Amended Complaint correcting the deficiencies in the Complaint, which are noted herein. (Adams Decl., at Ex. 1). Rather than engage



in a dialogue with Spotex concerning those deficiencies or substantively respond to Spotex's Letter, the Receiver directed Spotex to file its response to the Complaint and thereby necessitated court intervention on the issues. (Adams Decl., at Ex. 2). Accordingly, the Receiver was already given an opportunity to address the deficiencies in its Complaint and chose not to.

/s/ Matthew S. Adams

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*Attorneys for Defendant, Spotex LLC*

### **RULE 3.01(g) CERTIFICATION**

The undersigned certifies that he conferred with Plaintiff's counsel, who will oppose the requested relief.

By: /s/ Matthew S. Adams

Matthew S. Adams, Esq.

### **CERTIFICATE OF SERVICE**

I certify that on August 20, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to counsel of record.

By: /s/ Matthew S. Adams

Matthew S. Adams, Esq.

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

BURTON W. WIAND, not individually  
but solely in his capacity as Receiver  
for OASIS INTERNATIONAL  
GROUP, LIMITED, *et al.*,

Plaintiff,

v.

ATC BROKERS, LTD., DAVID  
MANOUKIAN, and SPOTEX LLC,

Defendants.

CASE NO. 8:21-cv-01317-MSS-AAS

**DECLARATION OF  
MATT EW S. ADAMS, ES .**

Matthew S. Adams, Esq., of full age, hereby certifies under penalty of perjury under the laws of the United States of America pursuant to 28 U.S.C. § 1746, as follows:

1. I am an Attorney of Law of the State of New Jersey and the State of New York, licensed to practice before the Court by *pro hac vice* application, and I am a partner with the law firm Fox Rothschild LLP. We represent defendant Spotex, LLC (“Spotex”) in connection with this action. I make this certification in support of Spotex’s Motion to Dismiss.

2. Annexed hereto as Exhibit 1 is a true and accurate copy of a letter, dated July 29, 2021, from counsel for Spotex to counsel for the Receiver concerning Spotex’s contemplated motion to dismiss pursuant to M.D. Fla., Local Rule 3.01(g)(1).

3. Annexed hereto as Exhibit 2 is a true and accurate copy of an email, dated August 12, 2021, from counsel for the Receiver to counsel for Spotex.

4. Annexed hereto as Exhibit 3 is a true and accurate copy of the Declaration of Joseph S. Anile, II, dated July 30, 2020.

5. Annexed hereto as Exhibit 4 is a true and accurate copy of the Declaration of Joseph Paniagua, dated July 30, 2020.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 20, 2021

/s/ Matthew S. Adams  
Matthew S. Adams

# EXHIBIT 1



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July 29, 2021

**BY EMAIL AND  
REGULAR MAIL**

James D. Sallah, Esq.  
Sallah Astarita & Cox, LLC  
3010 North Military Trail – Suite 210  
Boca Raton, FL 33431

**Re: Burton W. Wiand, et al. vs. ATC Brokers, Ltd., et al.  
Case No. 8:21-cv-01317-MSS-ASS**

Dear Jim:

Thank you for taking the time to meet-and-confer on Spotex, LLC’s (“Spotex”) contemplated Motion to Dismiss on July 21. This correspondence is being provided in furtherance of our good faith efforts to narrow or resolve issues as contemplated by M.D. Fla., Local Rule 3.01(g)(1).

In sum, we urge Burton W. Wiand (the “Receiver”) to voluntarily dismiss Spotex as a party to this action with prejudice based on its routine services to ATC Brokers Ltd. and indirect relationship with the Oasis Entities. The Receiver’s claims will also ultimately be barred because the Oasis Entities were controlled by the CFTC Defendants – persons engaging in and benefitting from the Ponzi scheme – and thus the entities cannot be said to have suffered injury from the scheme. *See, e.g., Isaiah v. JPMorgan Chase Bank, N.A.*, 960 F.3d 1296 (11<sup>th</sup> Cir. 2020). Moreover, as discussed during our call, you should be aware that Spotex will be playing a significant role as a witness in support of the government’s prosecution of Michael DaCorta, and the legally deficient theories that the Receiver has presented in its complaint against Spotex in this civil action will be directly and powerfully contradicted by the government’s factual presentation at that trial.

Alternatively, the Receiver should file an Amended Complaint correcting the deficiencies noted below in order to avoid the time and expense associated with Spotex’s Motion to Dismiss. As you know, the Middle District of Florida has not hesitated to dismiss initial complaints with

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota Nevada  
New Jersey New York North Carolina Pennsylvania South Carolina Texas Virginia Washington



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prejudice under Rule 12(b)(6) where alleged Ponzi schemes and tort claims are at issue. *See, e.g., Lawrence v. Bank of America, N.A.*, No. 8:09-cv-2162, 2010 WL 3467501 (M.D. Fla. Aug. 30, 2010) (Covington, J.), *aff'd*, 455 F. App'x 904 (11<sup>th</sup> Cir. 2012); *Groom v. Bank of America*, No. 8:08-cv-2567, 2012 WL 50250 (M.D. Fla. Jan. 9, 2012) (Whittemore, J.); and *O'Halloran v. First Union Nat'l Bank of Florida*, 205 F. Supp. 2d 1296 (M.D. Fla. 2002) (Kovachevich, J.). Spotex further intends to use the detailed discussion of the legal deficiencies in the Receiver's complaint as a basis to demonstrate why a dismissal without prejudice allowing for amendment would be futile, if necessary.

## I. Factual Allegations

On May 28, the Receiver filed a Complaint against ATC Brokers Ltd. ("ATC"), David Manoukian ("Manoukian"), and Spotex asserting the following claims: (1) aiding and abetting fraud against all defendants; (2) aiding and abetting breach of fiduciary duties against all defendants; (3-5) fraudulent transfers against ATC; (6) gross negligence against all defendants; and (7) simple negligence against all defendants. The claims are predicated on Michael J. DaCorta, Joseph S. Anile, II, Francisco L. Duran, John J. Haas, and Raymond P. Montie, III's (together, the "CFTC Defendants") use of Oasis International Group Limited, Oasis Management LLC, and Satellite Holdings Company to perpetrate a Ponzi scheme.

The Complaint alleges that ATC "was the exchange firm for the doomed forex trading underlying the Oasis Ponzi scheme and ultimately for more than \$21 million of investor-derived investments in two commodity pools for OGNZ ("Oasis Pool 1") and OGBelize ("Oasis Pool 2") which operated out of Florida." Complaint, ¶ 48. The Oasis Entities could not engage in any forex transactions without a forex firm that would open forex accounts for them and provide them with liquidity to trade on leverage. ATC was a firm that provided these services...." *Id.* at ¶ 81.

"Spotex created the software that DaCorta used to conduct the doomed forex trading, meaning Spotex provided the electronic trading platform that was necessary to carry out the Ponzi scheme. *Id.* at ¶ 34. "[T]he Oasis Entities could not engage in any forex transactions without a 'white label' software suite that would support the Oasis Entities and general online account records with various back-office tasks. Spotex, through their affiliation with ATC, was a firm that provided the technology for these services to ATC clients such as Anile, DaCorta, and other Oasis representatives." *Id.* at ¶ 65. "ATC, Manoukian, and Defendant Spotex also played a key role in the presentation of fraudulent website data to Oasis investors."<sup>1</sup> *Id.* at ¶¶ 94. Spotex allegedly

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<sup>1</sup> Despite the Receiver's allegations concerning Spotex's central role, knowledge of, and facilitation of the Ponzi scheme, OIG operators and directors have never taken the position that Spotex had any knowledge of any wrongdoing or participated in any fraud, negligence, or illegal conduct. Annexed hereto is the Declaration of Joseph Paniagua, dated July 30, 2020 and the Declaration of Joseph S. Anile II, dated July 30, 2020, marked as **Exhibit A** and **Exhibit B**, respectively.



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provided the CFTC Defendants with various back-end/back-office reports that would and did manipulate via back-end/back-office “adjustments” trading losses into fictitious trading profits and would populate the fictitious profits (and remove the losses) to the online portal viewable by investors, allegedly evidenced by a July 13, 2018 e-mail from Manoukian to Spotex re: a margin upload request. *Id.* at ¶¶ 95-113. The Receiver alleges Spotex’s statement that, “adjustments can be uploaded for required accounts into our back-office,” demonstrates the “Defendants” “knew about, assisted, participated, supervised, enabled, and ensured the successful completion of automating the back-end/back-office ‘adjustments’ to conceal the trading losses from investors and populate false/fictitious profits to them.” *Id.* at ¶¶ 106 and 109.

“Defendants had actual knowledge of the loss of all funds traded in forex trading, the failure to generate any trading profits to return to investors, the failure to transfer any funds back to the Oasis Entities, and the creation of false investor account records that hid massive trading losses and populated false profits, and Defendants substantially assisted or participated in such fraud.” *Id.* at ¶¶ 116 and 126. Defendants also allegedly breached their “duties of care to administer the ATC accounts for the Oasis Pools in accordance with, as opposed to in violation of, minimum industry standards for forex exchanges and providers of FX ECN-based technology.” *Id.* at ¶¶ 148 and 156.

## II. The Complaint Fails to State Claims on Which Relief Can be Granted

The Complaint fails to state claims on which relief can be granted for the: (1) Aiding and Abetting causes of action; and (2) Negligence causes of action.

### 1. The Aiding and Abetting Causes of Action Fail to State Claims on Which Relief Can Be Granted

To assert a claim for aiding and abetting, the Complaint must sufficiently allege: (1) an underlying wrongdoing (fraud, breach of fiduciary duty); (2) actual knowledge by the defendant; and (3) substantial assistance. *See ZP No. 54 Ltd. P’ship v. Fid. & Deposit Co. of Md.*, 917 So. 2d 368, 372 (Fla. 5th DCA 2005) (noting the elements of aiding and abetting fraud); *In re Caribbean K Line, Ltd.*, 288 B.R. 908, 919 (S.D. Fla. 2002) (noting the elements of aiding and abetting breach of fiduciary duty). To state claims for aiding and abetting, the Complaint must allege that *each of the defendants*: (1) committed an underlying violation; (2) had actual knowledge of the illegal conduct; and (3) provided substantial assistance to the scheme. The aiding and abetting fraud cause of action is subject to the heightened pleading requirements of Fed. R. Civ. P. 9(b). *Groom v. Bank of Am.*, *supra* at \*8.

As an initial matter, the Complaint contains contradictory allegations concerning Spotex’s actual knowledge. *Cf.* Complaint ¶ 113 (“Defendants knew, were generally aware, were reckless in not knowing, or alternatively, should have known that a Ponzi scheme was occurring on their own watch through the ATC accounts”) and Complaint ¶¶ 69, 71, 73, 74, 75, 76, 77, 83, and 84



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(Defendants “knew or should have known”) with Complaint ¶¶ 100, 107, 109, and 116 (Defendants “actually knew”). For this reason alone, the Receiver’s aiding and abetting claims are subject to dismissal.

Additionally, the aiding and abetting causes of action fail to state claims on which relief can be granted because the Receiver fails to plead facts sufficient to establish, beyond mere speculation, that Spotex had actual knowledge of the CFTC Defendants’ fraud or breach of fiduciary duty. The Receiver simply alleges in the Complaint that because Spotex stated, “adjustments can be uploaded for required accounts into our back-office,” that “Defendants” “knew about, assisted, participated, supervised, enabled, and ensured the successful completion of automating the back-end/back-office ‘adjustments’ to conceal the trading losses from investors and populate false/fictitious profits to them.” See Complaint at ¶¶ 106 and 109. These allegations are conclusory and insufficient. Simply because Spotex knew adjustments could be uploaded into the back-office does not mean that Spotex could have possibly been aware that the back-office adjustments were being used to conceal trading losses from investors. *See Platinum Ests., Inc. v. TD Bank, N.A.*, No. 11-60670-CIV, 2012 WL 760791, at \*3 (S.D. Fla. Mar. 8, 2012) (conclusory statements that a defendant “actually knew” is insufficient to support an aiding and abetting claim where the facts in the complaint only suggest that the defendant “should have known that something was amiss.”); *See also Wiand v. Wells Fargo Bank, N.A.*, 938 F. Supp. 2d 1238, 1242 (M.D. Fla. 2013) (the complaint did not provide a plausible factual basis to conclude that the bank knew that an actual misappropriation was intended or was in progress and thus because the receiver failed to allege actual knowledge on the part of the bank, the receiver’s claims for (1) aiding and abetting common law fraud, (2) aiding and abetting breach of fiduciary duty, (3) aiding and abetting conversion and (4) common law negligence were all be dismissed); *Lawrence*, supra at \*3-5 (dismissing the plaintiff’s aiding and abetting breach of fiduciary duty and conversion claims in the context of Ponzi scheme because the plaintiff failed to adequately allege that defendant affirmatively assisted, concealed, or knowingly rendered substantial assistance to perpetrators in alleged commission of fraud, conversion, or breach of fiduciary duty).

The Receiver’s allegations regarding “red flags” set forth at paragraphs 63 through 85 of the Complaint are also insufficient to adequately plead Spotex’s actual knowledge under governing law. *See Groom*, supra at \*3 (dismissing aiding and abetting claims against bank because referenced ‘red flags’ did not constitute the conscious awareness of wrongdoing necessary to maintain an aiding and abetting cause of action); and *Lawrence*, supra at \*3 (noting that “a plaintiff’s allegations that the defendants had ignored ‘atypical activities’ and other ‘red flags’ did not constitute the conscious awareness of wrongdoing necessary to maintain an aiding and abetting cause of action”).

As a matter of fact, OIG operators and directors have never contended that Spotex had any knowledge of any wrongdoing or participated in any illegal conduct. See **Exhibit A** and **Exhibit B**.





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The Complaint also fails to plead facts sufficient to establish, beyond mere speculation, that Spotex knowingly rendered substantial assistance in the CFTC Defendant's commission of wrongdoing or that Spotex knowingly rendered substantial assistance in the commission of the wrongdoing. First of all, Spotex never owed any duties to the CFTC Defendants or the Oasis Entities. "Florida law recognizes four sources of duties of care: statutes and regulations, judicial interpretations of legislation, judicial decisions, and duties arising from the facts of a particular case. See *Wiand v. Wells Fargo Bank, N.A.*, 86 F. Supp. 3d 1316, 1321 (M.D. Fla. 2015) (citing *Curd v. Mosaic Fertilizer, LLC*, 39 So. 3d 1216, 1227-28 (Fla. 2010)). Thus, the Receiver's allegations concerning Spotex's "failure to act", cannot constitute "substantial assistance" as a matter of law. See *Richter v. Wells Fargo Bank, N.A.*, No. 2:11-cv-695, 2015 WL 163086, at \*3 (M.D. Fla. Jan. 13, 2015) (Steele, J.) (citing *Hines v. FiServ, Inc.*, No. 08-cv-2569, 2010 WL 1249838, at \*4 (M.D. Fla. Mar. 25, 2010)) and *Groom*, supra at \*4.

A defendant also does not provide substantial assistance unless his action, or inaction, was a "substantial factor in causing the [underlying violation]." *Richter*, supra at \*3 (citing *In re Palm Beach Fin. Partners, L.P.*, 517 B.R. 310, 348 (Bankr. S.D. Fla. 2013)). Thus, substantial assistance will not be found where "[t]he amount of assistance alleged is minor in comparison to the massive scope of [the] overall fraudulent scheme." *Id.* Assuming *arguendo* the Receiver's allegations and theory concerning the July 2018 e-mail communications set forth at paragraphs 105 and 106 of the Complaint, Spotex cannot be said to be a "substantial factor in causing the" fraud or breaches of fiduciary duty that allegedly occurred over a four year period between March 2015 and April 2019.

## **2. The Negligence Causes of Action Fail to State Claims on Which Relief Can Be Granted**

To maintain an action for negligence, a plaintiff must establish that the defendant owed a duty, that the defendant breached that duty, and that this breach caused the plaintiff damages. *Wiand*, supra at 1247 (citing *Fla. Dep't of Corrs. v. Abril*, 969 So.2d 201, 204 (Fla. 2007)). Just as the Court determined the Receiver's allegations in *Wiand* were insufficient (e.g., Wells Fargo allegedly had a duty to meet the standard of care in the banking industry and duty to investigate suspicious transactions made by customers), the Court should likewise find the Receiver's allegations in this case to be insufficient (e.g., Defendants allegedly owed "duties of care to administer the ATC accounts for the Oasis Pools in accordance with, as opposed to in violation of, minimum industry standards for forex exchanges and providers of FX ECN-based technology"). *Cf. Wiand*, supra at 1324 and Complaint at ¶¶ 148 and 156.

Just as a bank does not owe a duty to a non-customer, Spotex does not owe a duty to non-customers. The Complaint makes clear that the "customers" in this matter were ATC's clients, not Spotex's clients. "Spotex provided a 'white label' software suite that would support ATC's clients and generate online account records with various back-office tasks for such clients. Spotex, through their affiliation with ATC, was a firm that provided the technology for these services to



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ATC's clients, such as Anile, DaCorta and other Oasis representatives." Complaint, at ¶95 (emphasis added). Spotex's only duty is to ATC, not ATC's customers. Accordingly, Spotex does not have the required duty for the Receiver to maintain a negligence cause of action against it in this matter.

### III. The Complaint is Subject to Dismissal on Other Grounds

The Complaint is also subject to dismissal on the following grounds: (1) the court lacks personal jurisdiction over Spotex; (2) the Communication Decency Act establishes immunity as to Spotex because Spotex is a passive interactive computer service; and (3) the Complaint is a shotgun pleading because it fails to specify what actions Spotex is responsible for as it pertains to the alleged fraud or negligence.

#### 1. The Middle District of Florida Lacks Personal Jurisdiction Over Spotex

In a federal diversity action, whether the court has personal jurisdiction over a nonresident defendant is determined by the law of the state in which the court sits. *Jet Charter Serv., Inc. v. Koeck*, 907 F.2d 1110, 1112 (11th Cir. 1990); *Prentice v. Prentice Colours, Inc.*, 779 F. Supp. 578, 581 (M.D. Fla. 1991). In Florida, a court must conduct a two-part analysis when deciding whether it has personal jurisdiction over a nonresident defendant. *Sculptchair, Inc. v. Century Arts, Ltd.*, 94 F.3d 623, 626 (11th Cir. 1996); *Venetian Salami Co. v. J.S. Parthenais*, 554 So. 2d 499, 502 (Fla. 1989). First, the court must determine whether the Florida long-arm statute provides a basis for personal jurisdiction over the nonresident defendant. *Sculptchair, Inc.*, 94 F.3d at 626. If the requirements of the statute are satisfied, the court must then determine whether sufficient minimum contacts to satisfy due process exist between Florida and the defendant such that the exercise of the court's jurisdiction over the nonresident defendant would not offend "traditional notions of fair play and substantial justice." *Id.*

Florida's long-arm statute provides that a nonresident defendant can be subject to the jurisdiction of the courts of the state if the defendant commits a tortious act within this state. *See* Fla. Stat. § 48.193(1)(b). The Complaint generally alleges personal jurisdiction over Spotex because, "pursuant to Florida Statute § 48.193(1)(a)(2), []Defendants committed tortious acts which touched, concerned, and affected the operations of OIG and the other Receivership Entities in Florida." Complaint, at ¶36. While Spotex denies that it committed any tortious acts, even if it did, and even if those acts affected operations in Florida, sufficient minimum contacts to satisfy due process do not exist between Florida and Spotex.

When an intentional tort is involved, courts use the *Calder* "effects" test to determine if minimum contacts have been met. *Navitar, Inc. v. eScholar, LLC*, No. 11-CV-20266-PAS, 2011 WL 13223668, at \*2 (S.D. Fla. July 7, 2011) (citing *Licciardello v. Lovelady*, 544 F.3d 1280, 1285-86 (11th Cir. 2008)). The *Calder* test requires a tort that was (1) intentional; (2) aimed at the



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forum state; and (3) caused harm that the defendant should have anticipated would be suffered in the forum state. *Id.*

Here, there are no facts that support the notion that Florida has personal jurisdiction over Spotex. The Complaint confirms that “Spotex is a Delaware limited liability company with an office in New Jersey [and that] none of Spotex’s members are citizens of Plaintiff’s residence of Florida.” Complaint, at ¶23. The Complaint further states that the Court has personal jurisdiction over Spotex because it “created the software that DaCorta used to conduct the doomed forex trading, meaning Spotex provided the electronic trading platform that was necessary to carry out the Ponzi scheme. Spotex maintained back-door accounts for OIG and the Oasis Pools through [www.spotex.com](http://www.spotex.com).” Complaint, at ¶34. Nowhere in the Complaint is it alleged that Spotex intentionally aimed any tortious conduct at Florida or that Spotex could have possibly anticipated anyone in Florida would suffer. *See Navitar, Inc. v. eScholar, LLC*, No. 11-CV-20266-PAS, 2011 WL 13223668, at \*2-3 (S.D. Fla. July 7, 2011) (an action against a computer software company that offered a software application was dismissed for lack of personal jurisdiction because the company’s business activities relating to the software were not specifically directed at Florida); *See also Vision Media TV Group, LLC v. Forte*, 724 F. Supp. 2d 1260 (S.D. Fla. 2010) (the court held that it lacked personal jurisdiction over the defendants, an individual and her LLC, who maintained a website on which she and the public could post comments about companies linked to 800 phone numbers because there was no evidence that the website targeted Florida or that the defendants aimed their conduct at Florida). Accordingly, Spotex’s contacts with Florida are not sufficient to satisfy due process and the Middle District of Florida lacks personal jurisdiction over Spotex.

## 2. The Communication Decency Act Establishes Immunity as to Spotex

The claims against Spotex are barred by the immunity provisions of the Communication Decency Act, 47 U.S.C. § 230(c), because Spotex is a passive “interactive computer service.” Congress enacted the statute to protect interactive computer service providers, like Spotex, from liability for their users’ content and conduct. The Complaint fails to sufficiently allege that Spotex acted as an “information content provider” rather than an “interactive computer service.” *In re BitConnect Sec. Litig.*, No. 18-CV-80086, 2019 WL 9104318, at \*12 (S.D. Fla. Aug. 23, 2019). Spotex, as a service provider, cannot be held liable for information originating with a third-party user of the service. *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006) (citing *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)). *See also Doe v. Kik Interactive, Inc.*, 482 F. Supp. 3d 1242, 1249 (S.D. Fla. 2020); *Mezey v. Twitter, Inc.*, No. 1:18-CV-21069-KMM, 2018 WL 5306769, at \*1 (S.D. Fla. July 19, 2018); *Kimzey v. Yelp! Inc.*, 836 F.3d 1263 (9th Cir. 2016); *e360Insight, LLC v. Comcast Corp.*, 546 F. Supp. 2d 605 (N.D. Ill. 2008); and *Doe v. Kik Interactive, Inc.*, 482 F. Supp. 3d 1242 (S.D. Fla. 2020). Accordingly, because the Complaint fails to allege that Spotex was responsible, in whole or in part, for the creation or development of the information provided on its software platform, the claims against Spotex are barred by the Communication Decency Act.



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### 3. The Complaint is a Shotgun Pleading

A shotgun pleading is a complaint that violates either Federal Rule of Civil Procedure 8(a)(2), or Rule 10(b), or both. *Barmapov v. Amuial*, 986 F.3d 1321, 1324 (11th Cir. 2021) (citing *Weiland v. Palm Beach Cnty Sheriff's Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015)). The Eleventh Circuit has recently identified four categories of shotgun pleadings:

- (1) A complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint;
- (2) A complaint that is replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action;
- (3) A complaint that does not separate each cause of action or claim for relief into a different count;
- (4) A complaint that asserts multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against.

*Barmapov* at 1324–25 (affirming dismissal of complaint with prejudice as a shotgun pleading).

Here, the Complaint fails to specify what actions Spotex is responsible for as it pertains to the alleged fraud or negligence and thus is a shotgun pleading. The Complaint makes it impossible to discern what the Receiver is claiming as to Spotex, thereby making it impossible for defense counsel to frame a responsive pleading. The Complaint fails to identify what acts or omissions Spotex is responsible for doing or not doing. *Id.* at 1325. The Complaint only states that “Spotex provided a ‘white label’ software suite that would support ATC’s clients and generate online account records[.]” Complaint, at ¶95. Providing software technology services and support related to that technology is not fraudulent or negligent, even if end users of that software use the technology unlawfully.

In sum, the Receiver fails to allege any actions by Spotex that support the elements necessary to support a claim for Aiding and Abetting Fraud, Aiding and Abetting Breaches of Fiduciary Duties, Gross Negligence and Simple Negligence.



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This letter is not intended to be a complete statement of all relevant facts, claims or defenses and does not constitute a waiver of any of Spotex's claims, rights, or defenses. Please be advised that if the Receiver does not address the deficiencies in the Complaint outlined above in their entirety, Spotex intends to rely on this letter in opposing the Receiver's request for leave to file an amended complaint. Please be guided accordingly.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Matthew S. Adams'.

Matthew S. Adams

Enclosures

cc: Christopher Torres, Esq. (via email)  
Christopher R. White, Esq. (via email)  
Robert F. Elgidely, Esq. (via email)  
Marissa Koblitz Kingman, Esq. (via email)

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

Case No. 8:19-CV-886-T-33SPF

v.

OASIS INTERNATIONAL GROUP,  
LIMITED *et al.*,

Defendants.

---

**DECLARATION OF JOSEPH PANIAGUA**

I, Joseph Paniagua, hereby declare as follows:

1. I have personal knowledge of the following facts.
2. I currently reside in New York.
3. In 2016, I went to work as director of operations for Oasis International Group, Ltd. (“OIG”). I was introduced to the officers of OIG through my late friend Frank Anile, and his brother, Joseph S. Anile II, who was a part-owner of OIG. Before his death, Frank Anile preceded me in the role of director of operations.
4. OIG’s business involved, among other things, trading on foreign currency exchanges.
5. During my employment at OIG, the CEO of OIG, Michael DaCorta, traded the investors’ and lenders’ funds through ATC Brokers<sup>1</sup> Ltd. (“ATC”). OIG, using the ATC software and website, distributed “spread pay” among investors and lenders. ATC software provided online account records for all OIG investors and lenders.
6. As the former director of operations, I am familiar with the website that ATC provided for OIG investors. ATC provided OIG with a “white label,” so that when OIG investors and lenders logged on to the ATC website, they saw “OIG” instead of ATC. The website was populated with trade data.
7. As a part of my employment, I was introduced to David Manoukian, who was in charge of ATC. Any time that I had an issue with OIG’s website, I contacted Mr. Manoukian, whom I knew as “Dave.”

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<sup>1</sup> According to e-mails I received from the domain “@atcbrokers.com,” the name “ATC Brokers” was used by a business operating in both the U.S. and U.K.



8. Mr. Manoukian represented himself to me as the President of ATC. In matters concerning ATC and the OIG website, Mr. Manoukian was “the go-to guy.” Mr. Manoukian was the person OIG dealt with to conduct its business with ATC. During the years I dealt with Mr. Manoukian, he operated out of an office in California.

9. My dealings with Mr. Manoukian indicated that he had access to records of OIG transactions and “spread pay.”

10. My dealings with ATC did not require me to go to London or deal with ATC employees in London.

11. Based upon my review of the e-mails attached hereto as **Exhibit A**, it appears to me that on June 23, 2015, Mr. Manoukian exchanged e-mails with my predecessor Frank Anile about activating an account. ATC also provided a trading software platform called MetaTrader 4 (“MT4”). Mr. DaCorta opened and closed trades through MT4.

12. Mr. DaCorta explained to me that OIG charged for trades on the basis of “pips.” I understand that a pip is a standardized unit of one ten-thousandth (0.0001). Two pips were charged any time a trade was opened or closed, for a total of four pips. I was advised that an opened and closed trade was known as a “turn.”

13. Based upon my review of a January 9, 2017 e-mail exchange, attached hereto as **Exhibit B**, Mr. Manoukian helped set up a new Omnibus account for Oasis Global FX, S.A. Exhibit B also reflects that Mr. Manoukian suggested to Joe Anile that they should schedule a call with me so that Mr. Manoukian could explain what I needed to do to set up the account. In addition, Exhibit B reflects that the account was available at [www.spotex.com/secure/oasis/](http://www.spotex.com/secure/oasis/).

14. Although I was not a recipient of the e-mail dated January 9, 2017, attached hereto as **Exhibit C**, it appears to me, based upon my review of Exhibit C, that ATC notified Joe Anile that his account application for Oasis Global FX, S.A had been approved. The e-mail also noted, "Details for your omnibus setup will be provided to you by Dave Manoukian, who will be in further communication with you regarding the creation of the account." The bottom of the e-mail listed both U.K. and U.S. contact information, including the California telephone numbers at which Mr. Manoukian was available.

15. On February 28, 2018, in response to a request from Mr. DaCorta, Mr. Manoukian e-mailed several reports to Mr. DaCorta, copying Joseph Anile and myself. Attached hereto as **Exhibit D** is a copy of that e-mail chain. If OIG needed reports of data available on the ATC website, Mr. Manoukian was able to complete and send those reports to OIG.

16. I believe the vast majority of investors and lenders in OIG were United States citizens. The principals of OIG that I was aware of (Joe Anile, Michael DaCorta, and Raymond Montie III) were, according to my understanding, United States citizens. The OIG headquarters were in Sarasota, Florida. I worked for OIG out of my home in New York. At no time during my employment with OIG did I have dealings with anyone that I understood was located in the U.K.

17. On April 15, 2019, at the request of John Caliendo, I e-mailed Mr. Manoukian and asked him to have ATC certify Oasis Global FX, S.A.'s December 31, 2018 year-end account balance of \$3,142,404.42 for Oasis Global FX, S.A.'s auditor. Shortly thereafter, Joe Anile received an e-mail from [compliance@atcbrokers.com](mailto:compliance@atcbrokers.com), attaching a letter with the

balance confirmation; I was copied on that email. A copy of the e-mail exchange and the certification letter are attached hereto as **Exhibit E**.

18. At the time ATC provided the certification letter on April 15, 2019, Mr. Manoukian had access to ATC software and records showing liabilities to OIG investors.

19. Further declarant sayeth naught.

**I DECLARE** under penalty of perjury that the foregoing is true and correct.

/s/ Joseph Paniagua  
Joseph Paniagua

July 30, 2020  
Date

balance confirmation; I was copied on that email. A copy of the e-mail exchange and the certification letter are attached hereto as **Exhibit E**.

18. At the time ATC provided the certification letter on April 15, 2019, Mr. Manoukian had access to ATC software and records showing liabilities to OIG investors.

19. Further declarant sayeth naught.

**I DECLARE** under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Joseph Paniagua

7-30-2020  
Date

# **EXHIBIT A**

Case 8:19-cv-00886-VMC-SPF Document 295-3 Filed 07/30/20 Page 8 of 21 PageID 4320

5/6/2020

Item #5455747: RE: Oasis Global FX - Intella Connect Previewer

**From:** Dave Manoukian <Dave@atcbrokers.com>  
**To:** Frank Anile <fanile@oasisglobalfx.com>  
**Sent:** June 23, 2015 1:15:27 PM EDT  
**Received:** June 23, 2015 1:15:52 PM EDT

16050051 is not in the 4 pip markup.

**From:** Frank Anile [mailto:fanile@oasisglobalfx.com]  
**Sent:** Tuesday, June 23, 2015 10:10 AM  
**To:** Dave Manoukian  
**Subject:** RE: Oasis Global FX

Dave,

Account 16050051 is in the 4 pip markup. The password is Oasismanagement.

Also Mike had asked me to remind you to add MT4 + in the watch list. Alex needed to reprogram the ATC symbol for 4 pips.

Thanks

**Frank Anile**

Mobile: 516-637-7871

Email: [fanile@oasisglobalfx.com](mailto:fanile@oasisglobalfx.com)



GLOBAL FX LIMITED

*A New Zealand Company*

[www.oasisglobalfx.com](http://www.oasisglobalfx.com)

**From:** Dave Manoukian [mailto:Dave@atcbrokers.com]  
**Sent:** Tuesday, June 23, 2015 12:24 PM  
**To:** Frank Anile  
**Cc:** Michael DaCorta; Joseph S. Anile II; 'Robert Utter'  
**Subject:** RE: Oasis Global FX

- o Account 16050051 may need to be activated on your end. I cannot log into the account on metatrader.

# **EXHIBIT B**

Case 8:19-cv-00886-VMC-SPF Document 295-3 Filed 07/30/20 Page 10 of 21 PageID 4322

3/13/2020

Item #8695784: FW: Oasis Global FX, S.A. - Intella Connect Previewer

## FW: Oasis Global FX, S.A.

---

**From:** Joseph S. Anile II <janile@oasisig.com>  
**To:** Michael DaCorta <mdacorta@oasisig.com>, Joe Paniagua (jpaniagua@oasisig.com) <jpaniagua@oasisig.com>  
**Sent:** January 9, 2017 5:54:50 PM EST  
**Received:** January 9, 2017 5:54:50 PM EST

Joe,

Please touch base with Dave to review back-office procedures.

Thanks,

Joe

**From:** Dave Manoukian [mailto:Dave@atcbrokers.com]  
**Sent:** Monday, January 09, 2017 5:50 PM  
**To:** janile@oasisig.com  
**Subject:** RE: Oasis Global FX, S.A.

Hi Joe,

The Omnibus Back office access is:

UN: OB60055

PW: (same as the old one)

<https://www.spotex.com/secure/oasis/>

Let's schedule a time with Joe Paniagua , where I can tell him what he needs to do to set things up.

Also, let me know when your team will be wiring the funds.

Thanks

Dave

**From:** Joseph S. Anile II [mailto:janile@oasisig.com]  
**Sent:** Monday, January 09, 2017 8:28 AM  
**To:** Dave Manoukian  
**Subject:** Oasis Global FX, S.A.

Dave,

As requested.

Best,

Joe



Case 8:19-cv-00886-VMC-SPF Document 295-3 Filed 07/30/20 Page 11 of 21 PageID 4323

3/13/2020

Item #8695784: FW: Oasis Global FX, S.A. - Intella Connect Previewer

# **EXHIBIT C**

## Deposit Instructions | ATC BROKERS

---

From: Accounts <Accounts@atcbrokers.com>  
To: janile@oasisglobal.bz  
Cc: Dave Manoukian <Dave@atcbrokers.com>  
Sent: January 9, 2017 3:29:48 PM EST  
Received: January 9, 2017 3:36:32 PM EST



Welcome to ATC BROKERS!

Your application has been approved and is now ready to be funded.

The instructions to fund your account can be found using the following link:

<http://www.atcbrokers.co.uk/deposit>

*Details for your omnibus setup will be provided to you by Dave Manoukian, who will be in further communication with you regarding the creation of the account.*

*You can list your account name (Oasis Global FX, S.A.) as the reference for the wire.*

You will use the wire details to the currency you wish to hold the account under.

IMPORTANT INFORMATION

### Third Party Payments

ATC BROKERS LTD may not make or receive third party payments. Deposits will only be accepted in the account holder's name. Restrictions on third party payments are set by banks and governmental authorities to protect client's funds.

### Credit Card Verification (required *only* upon request)

Accounts funded via credit card may be restricted to receiving withdrawals via credit card. Initial deposits made with a credit or debit card may require a recent statement or a copy of the card to confirm ownership. The cardholder's first and last name, as well as the last four digits of the card, must be legible in order for the statement/card to be acceptable.

### Managed Accounts

If any person other than you will control, manage, or direct the trading of this account, your application is not considered "complete" until we have received a signed Agency Agreement. This form is not required for self-traded accounts. Applicants who have already submitted the form need not send it again.

### Terms of Business

We advise you to fully read and understand all services, terms and conditions provided. Your account will always be subject to the most current version of the [Terms of Business](#). If you have any questions or concerns regarding any of the information provided, please contact us prior to trading.

### Questions

ATC provides live support 24 hours a day during normal trading hours. If you have any questions, please feel free to contact our office.

**ATC BROKERS**

Accounts Department

Email: [accounts@atcbrokers.com](mailto:accounts@atcbrokers.com)

UK Main: 44 (0) 20 3318 1399

UK Fax: 44 (0) 28 7122 0244

Web: [atcbrokers.co.uk](http://atcbrokers.co.uk)

US Main: 1.877.654.8400

US Direct: 1.818.545.8400

US Fax: 1.818.545.8410

Web: [atcbrokers.com](http://atcbrokers.com)

There is a high level risk in foreign exchange and futures trading which may not be suitable for all traders as it could result in the loss of the total deposit, only use risk capital. Prior to trading any products offered by ATC BROKERS, please carefully consider your experience level and financial situation. ATC BROKERS Limited (UK) is authorised and regulated in the United Kingdom by the Financial Conduct Authority (FRN 591361). ATC BROKERS (US) is a member of the National Futures Association (NFA 0358522) and is a registered introducing broker with the Commodity Futures Trading Commission (CFTC).

The information contained in this message may be privileged, confidential, and protected from disclosure. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you received this in error, please contact the sender and delete the material from any computer.

# **EXHIBIT D**

5/7/2019

Yahoo Mail - FW: Data

FW: Data

From: Joseph Paniagua (jpaniagua@oasisig.com)  
To: jpania@yahoo.com  
Date: Wednesday, February 28, 2018, 11:39 AM EST

fyi

**Joseph Paniagua**

Cell 516-578-0623  
Email: [jpaniagua@oasisig.com](mailto:jpaniagua@oasisig.com)

[www.oasisig.com](http://www.oasisig.com)

From: Dave Manoukian [mailto:Dave@alcbrokers.com]  
Sent: Wednesday, February 28, 2018 10:21 AM  
To: mdacorta@oasisig.com  
Cc: Joe Paniagua <jpaniagua@oasisig.com>; Joseph Anile <janile@oasisig.com>  
Subject: RE: Data

Dave,

Below Reports have been completed and attached.

1. Clients Accounts Report
2. IB Accounts Report
3. Backoffice Accounts Report
4. Compensation Report
5. Client Activity Report
6. Revenue Report

For below reports,

7. Account Snapshot Report—>No Historic data is available.

8. Account Summary—> We cannot retrieve the raw data for this report as the query is too complex to fetch in .csv format (the data can be easily downloaded from web if needed)

From: [mdacorta@oasisig.com](mailto:mdacorta@oasisig.com) [mailto:[mdacorta@oasisig.com](mailto:mdacorta@oasisig.com)]  
Sent: Tuesday, February 27, 2018 6:40 AM  
To: Dave Manoukian  
Cc: Joe Paniagua; Joseph Anile  
Subject: Data

Dave,

We need the remainder of the data ASAP.

Please let us know when we can expect it.

5/7/2019

Yahoo Mail - FW: Data

Mike




***Michael DaCorta***

CEO & Chief Investment Officer

Cell: 941-807-9933

Email: [mdacorta@oasisig.com](mailto:mdacorta@oasisig.com)

[www.oasisig.com](http://www.oasisig.com)

-  Oasis\_Backoffice\_Accounts.csv  
709B
-  Oasis\_Client\_Accounts.csv  
15 1kB
-  Oasis\_IB\_Accounts.csv  
14 7kB

# **EXHIBIT E**



## **Account Statement Summary**

---

**From:** Compliance <compliance@atcbrokers.com>  
**To:** janile@oasisig.com  
**Cc:** jpaniagua@oasisig.com  
**Sent:** April 18, 2019 2:35:05 PM EDT  
**Received:** April 18, 2019 2:35:32 PM EDT  
**Attachments:** Account Balance Notice.pdf

Hello,

Per your request, kindly find the attached letter with balance confirmation and supporting equity reports.

As the PDF contains sensitive client information, it has been password protected with your ATC account number.

Should you require anything further, please let us know.

Regards,

**ATC BROKERS**  
Compliance Department

Email: [compliance@atcbrokers.com](mailto:compliance@atcbrokers.com)

Int'l Main: 44 (0) 20 3318 1399  
US Main: 1 818 545 8400  
Web: [atcbrokers.com](http://atcbrokers.com)

There is a high level risk in foreign exchange and futures trading which may not be suitable for all traders as it could result in the loss of the total deposit, only use risk capital. Prior to trading any products offered by ATC BROKERS, please carefully consider your experience level and financial situation. ATC BROKERS Limited (KY) is regulated by the Cayman Islands Monetary Authority (RN 1448274). ATC BROKERS Limited (UK) is authorised and regulated in the United Kingdom by the Financial Conduct Authority (FRN 591361). ATC BROKERS (US) is a member of the National Futures Association (NFA 0358522) and is a registered introducing broker with the Commodity Futures Trading Commission (CFTC).

The information contained in this message may be privileged, confidential, and protected from disclosure. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you received this in error, please contact the sender and delete the material from any computer.

**From:** [jpaniagua@oasisig.com](mailto:jpaniagua@oasisig.com) [<mailto:jpaniagua@oasisig.com>]  
**Sent:** Monday, April 15, 2019 2:04 PM  
**To:** Dave Manoukian  
**Subject:** RE: Account Statement Summary

Dave,

Can you put in writing on your letter head in re to Oasis Global FX, S.A. the following:

- A) 12/31/2017 ending balance (Account – Account Statement Summary) of \$7,271,718.21 and
- B) 12/31/2018 ending balance (Account – Account Statement Summary) of \$3,142,404.42

This is for our auditor.

Please let me know if you would like to discuss further or if you need something else from me.

Thanks

Best regards,

Joe

**Joseph Paniagua**  
Cell: 516-578-0623  
Email: [jpaniagua@oasisig.com](mailto:jpaniagua@oasisig.com)





18<sup>th</sup> April 2019

RE: Account Balance Confirmation

To whom it may concern,

We hereby confirm that the end of year account balances of Oasis Global FX, S.A. holding account number OB60055 are as followed:

31<sup>st</sup> December 2017 – 7,271,718.21 USD

31<sup>st</sup> December 2018 – 3,142,404.42 USD

Included are end of year equity reports for supporting documents.

Should you require further details, please let us know.

A handwritten signature in black ink, appearing to read 'Jen Claudio', written over a horizontal line.

Jen Claudio  
Director and Chief Operating Officer

ATC BROKERS LTD.  
FCA REGULATED NO: 591361

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

COMMODITY FUTURES TRADING  
COMMISSION,

Case No. 8:19-CV-886-T-33SPF

Plaintiff,

v.

OASIS INTERNATIONAL GROUP,  
LIMITED *et al.*,

Defendants.

---

**DECLARATION OF JOSEPH S. ANILE II**

I, Joseph S. Anile II, hereby declare as follows:

1. I have personal knowledge of the following facts.
2. I currently reside in Jacksonville, Florida. I previously resided in Lakewood Ranch, Florida and Sarasota, Florida.
3. I am originally from New York. In 1991, I was admitted to the State Bar of New York. I was associated with the law firm Cadwalader, Wickersham & Taft LLP and later worked as an attorney for Lehman Brothers. My practice focused on corporate transactions.
4. I met Michael DaCorta in the late 1990's. In late 2012 he approached me about a new business he was forming. The business would involve trading on foreign currency exchanges ("**forex**").

5. In 2013 I became one of the co-founders of Mr. DaCorta's new business, Oasis International Group, Ltd. ("**OIG**") and related companies. From 2013 until 2019, I was the President of OIG and was involved in the business operations of that company.

6. The business operated as follows: OIG raised millions of dollars from public investors through representations that they would receive 12% annual return plus "spread pay" generated by the daily volume of trades made in forex by a wholly owned OIG affiliate, Oasis Global (Nevis), Limited. The trades of investors' funds in forex were executed by affiliated entities, Oasis Global FX, S.A. and Oasis Global FX, Ltd. (the "**Introducing Brokers**"). I formerly owned Oasis Global FX, S.A.

7. The Introducing Brokers conducted trading on behalf of OIG affiliate, Oasis Global (Nevis), Limited and its investors through ATC Brokers<sup>1</sup> Ltd. ("**ATC**") from 2017 through 2019. ATC software provided account records for all Oasis Global (Nevis), Limited trades and the forex volume to be distributed as purported "spread pay" among OIG investors.

8. I was the individual with OIG and the Introducing Brokers who negotiated and opened accounts for those companies with ATC. I spoke with David Manoukian in his role as the president of ATC in those transactions.

9. Mr. Manoukian directed ATC'S U.K. and U.S. operations from offices in California. While e-mails from Mr. Manoukian carried telephone numbers in the U.K. and U.S, when I needed to speak with Mr. Manoukian, I always called him at a number with a

---

<sup>1</sup> "ATC Brokers" was the name used by U.S. and U.K. businesses that used interlocking websites, shared e-mail services, and shared offices in California and the U.K. Mr. Manoukian listed himself as the president of both businesses in e-mails he sent.

Los Angeles area code. I do not presently remember ever reaching him or any other ATC staff by telephone in the U.K.

10. Due to my dealings with ATC, it was clear to me that Mr. Manoukian, who had the title of ATC president, was their number-one executive and in control of both ATC and ATC's U.S. affiliate. Mr. Manoukian represented himself to me as the head of his companies' operations. There was no distinction between the U.K. and U.S. operations. To put it informally, Mr. Manoukian was "the guy" at ATC.

11. My interactions with Mr. Manoukian also indicated to me that Mr. Manoukian had total access to all the records of his companies.

12. For example, on February 28, 2018, in response to an urgent request from Mr. DaCorta, Mr. Manoukian used his U.S.-affiliate e-mail ([Dave@atcbrokers.com](mailto:Dave@atcbrokers.com)) to send detailed Oasis Global (Nevis), Limited client account, back office, compensation, client activity, and revenue reports to Mr. DaCorta, myself, and Joe Paniagua, the director of operations for Oasis. Attached hereto as **Exhibit A** is a copy of that e-mail.

13. Part of the services that ATC provided to OIG was the use of an IT platform to set up accounts for all the OIG investors in OIG Global (Nevis), Limited. These accounts reflected balances in those accounts, trading volume, and purported income that had been received in those accounts.

14. The vast majority of investors in OIG and its related companies were United States citizens. The operations of OIG were conducted from the United States. All the principals of the company were United States citizens. The offices of the company were in Florida and certain individuals working for the company were also located in New York. To

my knowledge, no individual with Oasis International Group ever traveled to the UK to deal with ATC. At no time during my dealings with ATC did I have significant dealings with anyone in the UK.

15. From time to time Mr. Manoukian asked me questions about business unrelated to OIG. His inquiries also indicated that he was looking for investors. Mr. DaCorta indicated to me that OIG was one of ATC's largest daily volume clients if not its largest.

16. OIG considered investing in ATC's electronic communications network, SPOTEX. Mr. Manoukian invited Mr. DaCorta and myself onto a conference call to discuss this possibility. More specifically, Mr. Manoukian asked Oasis to replace an investor in SPOTEX. OIG and Mr. Manoukian could not come to terms and the proposed investment never occurred.

17. In 2019, the CFTC brought an action against OIG, its related entities, and its principals, including me, charging that the investment business of OIG was a Ponzi scheme. Charges have been brought against me by the United States Attorney's office in the Middle District of Florida with respect to OIG and its related entities and my involvement therein. I have pleaded guilty to those charges and am awaiting sentencing.

18. Further declarant sayeth naught.

**I DECLARE** under penalty of perjury that the foregoing is true and correct.

/s/ Joseph S. Anile II  
Joseph S. Anile II

July 30, 2020  
Date



my knowledge, no individual with Oasis International Group ever traveled to the UK to deal with ATC. At no time during my dealings with ATC did I have significant dealings with anyone in the UK.

15. From time to time Mr. Manoukian asked me questions about business unrelated to OIG. His inquiries also indicated that he was looking for investors. Mr. DaCorta indicated to me that OIG was one of ATC's largest daily volume clients if not its largest.

16. OIG considered investing in ATC's electronic communications network. SPOTEX. Mr. Manoukian invited Mr. DaCorta and myself onto a conference call to discuss this possibility. More specifically, Mr. Manoukian asked Oasis to replace an investor in SPOTEX. OIG and Mr. Manoukian could not come to terms and the proposed investment never occurred.

17. In 2019, the CFTC brought an action against OIG, its related entities, and its principals, including me, charging that the investment business of OIG was a Ponzi scheme. Charges have been brought against me by the United States Attorney's office in the Middle District of Florida with respect to OIG and its related entities and my involvement therein. I have pleaded guilty to those charges and am awaiting sentencing.

18. Further declarant sayeth naught.

**I DECLARE** under penalty of perjury that the foregoing is true and correct.

  
/s/ Joseph S. Anile II  
Joseph S. Anile II

July 30, 2020  
Date

# **EXHIBIT A**

Case 8:19-cv-00886-VMC-SPF Document 295-2 Filed 07/30/20 Page 7 of 8 PageID 4311

5/7/2019

Yahoo Mail - FW: Data

FW: Data

From: Joseph Paniagua (jpaniagua@oasisig.com)  
To: jpania@yahoo.com  
Date: Wednesday, February 28, 2018, 11:39 AM EST

fyi

**Joseph Paniagua**

Cell: 516-576-0823  
Email: [jpaniagua@oasisig.com](mailto:jpaniagua@oasisig.com)

[www.oasisig.com](http://www.oasisig.com)

From: Dave Manoukian (mailto:Dave@atcbrokers.com)  
Sent: Wednesday, February 28, 2018 10:21 AM  
To: [mdacorta@oasisig.com](mailto:mdacorta@oasisig.com)  
Cc: Joe Paniagua <[jpaniagua@oasisig.com](mailto:jpaniagua@oasisig.com)>; Joseph Anile <[janile@oasisig.com](mailto:janile@oasisig.com)>  
Subject: RE: Data

Dave,

Below Reports have been completed and attached.

1. Clients Accounts Report
2. IB Accounts Report
3. Backoffice Accounts Report
4. Compensation Report
5. Client Activity Report
6. Revenue Report

For below reports,

7. Account Snapshot Report—>No Historic data is available.
8. Account Summary—> We cannot retrieve the raw data for this report as the query is too complex to fetch in .csv format (the data can be easily downloaded from web if needed)

From: [mdacorta@oasisig.com](mailto:mdacorta@oasisig.com) (mailto:[mdacorta@oasisig.com](mailto:mdacorta@oasisig.com))  
Sent: Tuesday, February 27, 2018 6:40 AM  
To: Dave Manoukian  
Cc: Joe Paniagua; Joseph Anile  
Subject: Data

Dave,

We need the remainder of the data ASAP.

Please let us know when we can expect it.

5/7/2019

Yahoo Mail - FW: Data

Mike

*Michael DaCorta*

CEO & Chief Investment Officer

Cell: 941-807-9833

Email: [mdacorta@oasisig.com](mailto:mdacorta@oasisig.com)

[www.oasisig.com](http://www.oasisig.com)

-  Oasis\_Backoffice\_Accounts.csv  
709B
-  Oasis\_Client\_Accounts.csv  
15.7kB
-  Oasis\_IB\_Accounts.csv  
14.7kB

# **EXHIBIT 2**

---

**From:** James Sallah <[jds@sallahlaw.com](mailto:jds@sallahlaw.com)>  
**Sent:** August 12, 2021 2:06 PM  
**To:** Adams, Matthew S. <[MAdams@foxrothschild.com](mailto:MAdams@foxrothschild.com)>; Patrick J. Rengstl, Esq. <[pjr@sallahlaw.com](mailto:pjr@sallahlaw.com)>; Kingman, Marissa Koblitz <[mkingman@foxrothschild.com](mailto:mkingman@foxrothschild.com)>; Elgidely, Robert F. <[RElgidely@foxrothschild.com](mailto:RElgidely@foxrothschild.com)>  
**Cc:** Joshua Katz <[jak@sallahlaw.com](mailto:jak@sallahlaw.com)>  
**Subject:** [EXT] RE: Wiand v. ATC Broker Ltd.

Matt:

Thank you for your letter dated July 29, which we have carefully reviewed with Receiver. Please proceed with your responsive filing.

Best Regards,

**JAMES D. SALLAH, ESQ.**

**SALLAH ASTARITA & COX, LLC**  
3010 NORTH MILITARY TRAIL, SUITE 210 | BOCA RATON, FLORIDA 33431  
**PHONE:** (561) 989-9080 | **FAX:** (561) 989-9020  
[JDS@SALLAHLAW.COM](mailto:JDS@SALLAHLAW.COM) | [WWW.SALLAHLAW.COM](http://WWW.SALLAHLAW.COM)

**NEW YORK OFFICE:** 100 PARK AVENUE, 16<sup>TH</sup> FLOOR, NEW YORK, NY 10017 | PH. (212) 509-6544

**NEW JERSEY OFFICE:** 60 POMPTON AVENUE | VERONA, NJ 07044 | PH. (973) 559-5566

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Please consider the environment before printing this.

# EXHIBIT 3



UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

COMMODITY FUTURES TRADING  
COMMISSION,

Case No. 8:19-CV-886-T-33SPF

Plaintiff,

v.

OASIS INTERNATIONAL GROUP,  
LIMITED *et al.*,

Defendants.

---

**DECLARATION OF JOSEPH S. ANILE II**

I, Joseph S. Anile II, hereby declare as follows:

1. I have personal knowledge of the following facts.
2. I currently reside in Jacksonville, Florida. I previously resided in Lakewood Ranch, Florida and Sarasota, Florida.
3. I am originally from New York. In 1991, I was admitted to the State Bar of New York. I was associated with the law firm Cadwalader, Wickersham & Taft LLP and later worked as an attorney for Lehman Brothers. My practice focused on corporate transactions.
4. I met Michael DaCorta in the late 1990's. In late 2012 he approached me about a new business he was forming. The business would involve trading on foreign currency exchanges (“forex”).

5. In 2013 I became one of the co-founders of Mr. DaCorta's new business, Oasis International Group, Ltd. ("**OIG**") and related companies. From 2013 until 2019, I was the President of **OIG** and was involved in the business operations of that company.

6. The business operated as follows: **OIG** raised millions of dollars from public investors through representations that they would receive 12% annual return plus "spread pay" generated by the daily volume of trades made in forex by a wholly owned **OIG** affiliate, Oasis Global (Nevis), Limited. The trades of investors' funds in forex were executed by affiliated entities, Oasis Global FX, S.A. and Oasis Global FX, Ltd. (the "**Introducing Brokers**"). I formerly owned Oasis Global FX, S.A.

7. The **Introducing Brokers** conducted trading on behalf of **OIG** affiliate, Oasis Global (Nevis), Limited and its investors through **ATC Brokers**<sup>1</sup> Ltd. ("**ATC**") from 2017 through 2019. **ATC** software provided account records for all Oasis Global (Nevis), Limited trades and the forex volume to be distributed as purported "spread pay" among **OIG** investors.

8. I was the individual with **OIG** and the **Introducing Brokers** who negotiated and opened accounts for those companies with **ATC**. I spoke with David Manoukian in his role as the president of **ATC** in those transactions.

9. Mr. Manoukian directed **ATC**'S U.K. and U.S. operations from offices in California. While e-mails from Mr. Manoukian carried telephone numbers in the U.K. and U.S, when I needed to speak with Mr. Manoukian, I always called him at a number with a

---

<sup>1</sup> "**ATC Brokers**" was the name used by U.S. and U.K. businesses that used interlocking websites, shared e-mail services, and shared offices in California and the U.K. Mr. Manoukian listed himself as the president of both businesses in e-mails he sent.

Los Angeles area code. I do not presently remember ever reaching him or any other ATC staff by telephone in the U.K.

10. Due to my dealings with ATC, it was clear to me that Mr. Manoukian, who had the title of ATC president, was their number-one executive and in control of both ATC and ATC's U.S. affiliate. Mr. Manoukian represented himself to me as the head of his companies' operations. There was no distinction between the U.K. and U.S. operations. To put it informally, Mr. Manoukian was "the guy" at ATC.

11. My interactions with Mr. Manoukian also indicated to me that Mr. Manoukian had total access to all the records of his companies.

12. For example, on February 28, 2018, in response to an urgent request from Mr. DaCorta, Mr. Manoukian used his U.S.-affiliate e-mail ([Dave@atcbrokers.com](mailto:Dave@atcbrokers.com)) to send detailed Oasis Global (Nevis), Limited client account, back office, compensation, client activity, and revenue reports to Mr. DaCorta, myself, and Joe Paniagua, the director of operations for Oasis. Attached hereto as **Exhibit A** is a copy of that e-mail.

13. Part of the services that ATC provided to OIG was the use of an IT platform to set up accounts for all the OIG investors in OIG Global (Nevis), Limited. These accounts reflected balances in those accounts, trading volume, and purported income that had been received in those accounts.

14. The vast majority of investors in OIG and its related companies were United States citizens. The operations of OIG were conducted from the United States. All the principals of the company were United States citizens. The offices of the company were in Florida and certain individuals working for the company were also located in New York. To

my knowledge, no individual with Oasis International Group ever traveled to the UK to deal with ATC. At no time during my dealings with ATC did I have significant dealings with anyone in the UK.

15. From time to time Mr. Manoukian asked me questions about business unrelated to OIG. His inquiries also indicated that he was looking for investors. Mr. DaCorta indicated to me that OIG was one of ATC's largest daily volume clients if not its largest.

16. OIG considered investing in ATC's electronic communications network, SPOTEX. Mr. Manoukian invited Mr. DaCorta and myself onto a conference call to discuss this possibility. More specifically, Mr. Manoukian asked Oasis to replace an investor in SPOTEX. OIG and Mr. Manoukian could not come to terms and the proposed investment never occurred.

17. In 2019, the CFTC brought an action against OIG, its related entities, and its principals, including me, charging that the investment business of OIG was a Ponzi scheme. Charges have been brought against me by the United States Attorney's office in the Middle District of Florida with respect to OIG and its related entities and my involvement therein. I have pleaded guilty to those charges and am awaiting sentencing.

18. Further declarant sayeth naught.

**I DECLARE** under penalty of perjury that the foregoing is true and correct.

/s/ Joseph S. Anile II  
Joseph S. Anile II

July 30, 2020  
Date

my knowledge, no individual with Oasis International Group ever traveled to the UK to deal with ATC. At no time during my dealings with ATC did I have significant dealings with anyone in the UK.


15. From time to time Mr. Manoukian asked me questions about business unrelated to OIG. His inquiries also indicated that he was looking for investors. Mr. DaCorta indicated to me that OIG was one of ATC's largest daily volume clients if not its largest.

16. OIG considered investing in ATC's electronic communications network, SPOTEX. Mr. Manoukian invited Mr. DaCorta and myself onto a conference call to discuss this possibility. More specifically, Mr. Manoukian asked Oasis to replace an investor in SPOTEX. OIG and Mr. Manoukian could not come to terms and the proposed investment never occurred.

17. In 2019, the CFTC brought an action against OIG, its related entities, and its principals, including me, charging that the investment business of OIG was a Ponzi scheme. Charges have been brought against me by the United States Attorney's office in the Middle District of Florida with respect to OIG and its related entities and my involvement therein. I have pleaded guilty to those charges and am awaiting sentencing.

18. Further declarant sayeth naught.

**I DECLARE** under penalty of perjury that the foregoing is true and correct.

  
/s/ Joseph S. Anile II  
Joseph S. Anile II

July 30, 2020  
Date

# EXHIBIT A

5/7/2019

Yahoo Mail - FW: Data

FW: Data

From: Joseph Paniagua (jpaniagua@oasisig.com)  
To: jpania@yahoo.com  
Date: Wednesday, February 28, 2018, 11:39 AM EST

fyi

**Joseph Paniagua**

Cell: 516-578-0623

Email: [jpaniagua@oasisig.com](mailto:jpaniagua@oasisig.com)

[www.oasisig.com](http://www.oasisig.com)

From: Dave Manoukian [mailto:Dave@atcbrokers.com]  
Sent: Wednesday, February 28, 2018 10:21 AM  
To: mdacorta@oasisig.com  
Cc: Joe Paniagua <jpaniagua@oasisig.com>; Joseph Anile <janile@oasisig.com>  
Subject: RE: Data

Dave,

Below Reports have been completed and attached.

1. Clients Accounts Report
2. IB Accounts Report
3. Backoffice Accounts Report
4. Compensation Report
5. Client Activity Report
6. Revenue Report

For below reports.

7. Account Snapshot Report---->No Historic data is available.

8. Account Summary-----> We cannot retrieve the raw data for this report as the query is too complex to fetch in .csv format (the data can be easily downloaded from web if needed)

---

From: [mdacorta@oasisig.com](mailto:mdacorta@oasisig.com) [mailto:mdacorta@oasisig.com]  
Sent: Tuesday, February 27, 2018 6:40 AM  
To: Dave Manoukian  
Cc: Joe Paniagua; Joseph Anile  
Subject: Data

Dave,

We need the remainder of the data ASAP.

Please let us know when we can expect it.

5/7/2019

Yahoo Mail - FW: Data

Mike




***Michael DaCorta***

CEO & Chief Investment Officer

Cell: 941-807-9933

Email: [mdacorta@oasisig.com](mailto:mdacorta@oasisig.com)

[www.oasisig.com](http://www.oasisig.com)

-  Oasis\_Backoffice\_Accounts.csv  
709B
-  Oasis\_Client\_Accounts.csv  
15.1kB
-  Oasis\_IB\_Accounts.csv  
14.7kB



# EXHIBIT 4

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

COMMODITY FUTURES TRADING  
COMMISSION,

Case No. 8:19-CV-886-T-33SPF

Plaintiff,

v.

OASIS INTERNATIONAL GROUP,  
LIMITED *et al.*,

Defendants.

---

**DECLARATION OF JOSEPH PANIAGUA**

I, Joseph Paniagua, hereby declare as follows:

1. I have personal knowledge of the following facts.
2. I currently reside in New York.
3. In 2016, I went to work as director of operations for Oasis International Group, Ltd. (“**OIG**”). I was introduced to the officers of **OIG** through my late friend Frank Anile, and his brother, Joseph S. Anile II, who was a part-owner of **OIG**. Before his death, Frank Anile preceded me in the role of director of operations.
4. **OIG**’s business involved, among other things, trading on foreign currency exchanges.
5. During my employment at **OIG**, the CEO of **OIG**, Michael DaCorta, traded the investors’ and lenders’ funds through ATC Brokers<sup>1</sup> Ltd. (“**ATC**”). **OIG**, using the **ATC** software and website, distributed “spread pay” among investors and lenders. **ATC** software provided online account records for all **OIG** investors and lenders.
6. As the former director of operations, I am familiar with the website that **ATC** provided for **OIG** investors. **ATC** provided **OIG** with a “white label,” so that when **OIG** investors and lenders logged on to the **ATC** website, they saw “**OIG**” instead of **ATC**. The website was populated with trade data.
7. As a part of my employment, I was introduced to David Manoukian, who was in charge of **ATC**. Any time that I had an issue with **OIG**’s website, I contacted Mr. Manoukian, whom I knew as “Dave.”

---

<sup>1</sup> According to e-mails I received from the domain “@atcbrokers.com,” the name “**ATC Brokers**” was used by a business operating in both the U.S. and U.K.

8. Mr. Manoukian represented himself to me as the President of ATC. In matters concerning ATC and the OIG website, Mr. Manoukian was “the go-to guy.” Mr. Manoukian was the person OIG dealt with to conduct its business with ATC. During the years I dealt with Mr. Manoukian, he operated out of an office in California.

9. My dealings with Mr. Manoukian indicated that he had access to records of OIG transactions and “spread pay.”

10. My dealings with ATC did not require me to go to London or deal with ATC employees in London.

11. Based upon my review of the e-mails attached hereto as **Exhibit A**, it appears to me that on June 23, 2015, Mr. Manoukian exchanged e-mails with my predecessor Frank Anile about activating an account. ATC also provided a trading software platform called MetaTrader 4 (“**MT4**”). Mr. DaCorta opened and closed trades through MT4.

12. Mr. DaCorta explained to me that OIG charged for trades on the basis of “pips.” I understand that a pip is a standardized unit of one ten-thousandth (0.0001). Two pips were charged any time a trade was opened or closed, for a total of four pips. I was advised that an opened and closed trade was known as a “turn.”

13. Based upon my review of a January 9, 2017 e-mail exchange, attached hereto as **Exhibit B**, Mr. Manoukian helped set up a new Omnibus account for Oasis Global FX, S.A. Exhibit B also reflects that Mr. Manoukian suggested to Joe Anile that they should schedule a call with me so that Mr. Manoukian could explain what I needed to do to set up the account. In addition, Exhibit B reflects that the account was available at [www.spotex.com/secure/oasis/](http://www.spotex.com/secure/oasis/).

14. Although I was not a recipient of the e-mail dated January 9, 2017, attached hereto as **Exhibit C**, it appears to me, based upon my review of Exhibit C, that ATC notified Joe Anile that his account application for Oasis Global FX, S.A had been approved. The e-mail also noted, “Details for your omnibus setup will be provided to you by Dave Manoukian, who will be in further communication with you regarding the creation of the account.” The bottom of the e-mail listed both U.K. and U.S. contact information, including the California telephone numbers at which Mr. Manoukian was available.

15. On February 28, 2018, in response to a request from Mr. DaCorta, Mr. Manoukian e-mailed several reports to Mr. DaCorta, copying Joseph Anile and myself. Attached hereto as **Exhibit D** is a copy of that e-mail chain. If OIG needed reports of data available on the ATC website, Mr. Manoukian was able to complete and send those reports to OIG.

16. I believe the vast majority of investors and lenders in OIG were United States citizens. The principals of OIG that I was aware of (Joe Anile, Michael DaCorta, and Raymond Montie III) were, according to my understanding, United States citizens. The OIG headquarters were in Sarasota, Florida. I worked for OIG out of my home in New York. At no time during my employment with OIG did I have dealings with anyone that I understood was located in the U.K.

17. On April 15, 2019, at the request of John Caliendo, I e-mailed Mr. Manoukian and asked him to have ATC certify Oasis Global FX, S.A.’s December 31, 2018 year-end account balance of \$3,142,404.42 for Oasis Global FX, S.A.’s auditor. Shortly thereafter, Joe Anile received an e-mail from [compliance@atcbrokers.com](mailto:compliance@atcbrokers.com), attaching a letter with the

balance confirmation; I was copied on that email. A copy of the e-mail exchange and the certification letter are attached hereto as **Exhibit E**.

18. At the time ATC provided the certification letter on April 15, 2019, Mr. Manoukian had access to ATC software and records showing liabilities to OIG investors.

19. Further declarant sayeth naught.

**I DECLARE** under penalty of perjury that the foregoing is true and correct.

/s/ Joseph Paniagua  
Joseph Paniagua

July 30, 2020  
Date

balance confirmation; I was copied on that email. A copy of the e-mail exchange and the certification letter are attached hereto as **Exhibit E**.

18. At the time ATC provided the certification letter on April 15, 2019, Mr. Manoukian had access to ATC software and records showing liabilities to OIG investors.

19. Further declarant sayeth naught.

**I DECLARE** under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
**Joseph Paniagua**

7-30-2020  
**Date**

# EXHIBIT A



**From:** Dave Manoukian <Dave@atcbrokers.com>  
**To:** Frank Anile <fanile@oasisglobalfx.com>  
**Sent:** June 23, 2015 1:15:27 PM EDT  
**Received:** June 23, 2015 1:15:52 PM EDT

16050051 is not in the 4 pip markup.

---

**From:** Frank Anile [mailto:fanile@oasisglobalfx.com]  
**Sent:** Tuesday, June 23, 2015 10:10 AM  
**To:** Dave Manoukian  
**Subject:** RE: Oasis Global FX

Dave,

Account 16050051 is in the 4 pip markup. The password is Oas1smanagement.

Also Mike had asked me to remind you to add MT4 + in the watch list. Alex needed to reprogram the ATC symbol for 4 pips.

Thanks

**Frank Anile**

Mobile: 516-637-7871

Email: [fanile@oasisglobalfx.com](mailto:fanile@oasisglobalfx.com)



---

**From:** Dave Manoukian [mailto:Dave@atcbrokers.com]  
**Sent:** Tuesday, June 23, 2015 12:24 PM  
**To:** Frank Anile  
**Cc:** Michael DaCorta; Joseph S. Anile II; 'Robert Utter'  
**Subject:** RE: Oasis Global FX

- o Account 16050051 may need to activated on your end. I cannot log into the account on metatrader.

# **EXHIBIT B**

3/13/2020

Item #8695784: FW: Oasis Global FX, S.A. - Intella Connect Previewer

# FW: Oasis Global FX, S.A.

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**From:** Joseph S. Anile II <janile@oasisig.com>  
**To:** Michael DaCorta <mdacorta@oasisig.com>, Joe Paniagua (jpaniagua@oasisig.com) <jpaniagua@oasisig.com>  
**Sent:** January 9, 2017 5:54:50 PM EST  
**Received:** January 9, 2017 5:54:50 PM EST

Joe,

Please touch base with Dave to review back-office procedures.

Thanks,

Joe

**From:** Dave Manoukian [mailto:Dave@atcbrokers.com]  
**Sent:** Monday, January 09, 2017 5:50 PM  
**To:** janile@oasisig.com  
**Subject:** RE: Oasis Global FX, S.A.

Hi Joe,

The Omnibus Back office access is:

UN: OB60055

PW: (same as the old one)

<https://www.spotex.com/secure/oasis/>

Let's schedule a time with Joe Paniagua , where I can tell him what he needs to do to set things up.

Also, let me know when your team will be wiring the funds.

Thanks

Dave

**From:** Joseph S. Anile II [mailto:janile@oasisig.com]  
**Sent:** Monday, January 09, 2017 8:28 AM  
**To:** Dave Manoukian  
**Subject:** Oasis Global FX, S.A.

Dave,

As requested.

Best,

Joe

3/13/2020

Item #8695784: FW: Oasis Global FX, S.A. - Intella Connect Previewer

# EXHIBIT C

## Deposit Instructions | ATC BROKERS

---

From: Accounts <Accounts@atcbrokers.com>  
To: janile@oasisglobal.bz  
Cc: Dave Manoukian <Dave@atcbrokers.com>  
Sent: January 9, 2017 3:29:48 PM EST  
Received: January 9, 2017 3:36:32 PM EST



Welcome to ATC BROKERS!

Your application has been approved and is now ready to be funded.

The instructions to fund your account can be found using the following link:

<http://www.atcbrokers.co.uk/deposit>

*Details for your omnibus setup will be provided to you by Dave Manoukian, who will be in further communication with you regarding the creation of the account.*

*You can list your account name (Oasis Global FX, S.A.) as the reference for the wire.*

You will use the wire details to the currency you wish to hold the account under.

### IMPORTANT INFORMATION

#### **Third Party Payments**

ATC BROKERS LTD may not make or receive third party payments. Deposits will only be accepted in the account holder's name. Restrictions on third party payments are set by banks and governmental authorities to protect client's funds.

#### **Credit Card Verification** (required *only* upon request)

Accounts funded via credit card may be restricted to receiving withdrawals via credit card. Initial deposits made with a credit or debit card may require a recent statement or a copy of the card to confirm ownership. The cardholder's first and last name, as well as the last four digits of the card, must be legible in order for the statement/card to be acceptable.

#### **Managed Accounts**

If any person other than you will control, manage, or direct the trading of this account, your application is not considered "complete" until we have received a signed Agency Agreement. This form is not required for self-traded accounts. Applicants who have already submitted the form need not send it again.

#### **Terms of Business**

We advise you to fully read and understand all services, terms and conditions provided. Your account will always be subject to the most current version of the [Terms of Business](#). If you have any questions or concerns regarding any of the information provided, please contact us prior to trading.

#### **Questions**

ATC provides live support 24 hours a day during normal trading hours. If you have any questions, please feel free to contact our office.

**ATC BROKERS**  
Accounts Department

Email: [accounts@atcbrokers.com](mailto:accounts@atcbrokers.com)

UK Main: 44 (0) 20 3318 1399  
UK Fax: 44 (0) 28 7122 0244  
Web: [atcbrokers.co.uk](http://atcbrokers.co.uk)

US Main: 1.877.654.8400  
US Direct: 1.818.545.8400  
US Fax: 1.818.545.8410  
Web: [atcbrokers.com](http://atcbrokers.com)

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# **EXHIBIT D**



5/7/2019

Yahoo Mail - FW: Data

FW: Data

From: Joseph Paniagua (jpaniagua@oasisig.com)  
To: jpania@yahoo.com  
Date: Wednesday, February 28, 2018, 11:39 AM EST

fyi

**Joseph Paniagua**

Cell: 516-578-0623  
Email: [jpaniagua@oasisig.com](mailto:jpaniagua@oasisig.com)

[www.oasisig.com](http://www.oasisig.com)

From: Dave Manoukian [mailto:Dave@atcbrokers.com]  
Sent: Wednesday, February 28, 2018 10:21 AM  
To: mdacorta@oasisig.com  
Cc: Joe Paniagua <jpaniagua@oasisig.com>; Joseph Anile <janile@oasisig.com>  
Subject: RE: Data

Dave,

Below Reports have been completed and attached.

- 1. Clients Accounts Report
- 2. IB Accounts Report
- 3. Backoffice Accounts Report
- 4. Compensation Report
- 5. Client Activity Report
- 6. Revenue Report

For below reports.

- 7. Account Snapshot Report---->No Historic data is available.
- 8. Account Summary-----> We cannot retrieve the raw data for this report as the query is too complex to fetch in .csv format (the data can be easily downloaded from web if needed)

From: [mdacorta@oasisig.com](mailto:mdacorta@oasisig.com) [mailto:mdacorta@oasisig.com]  
Sent: Tuesday, February 27, 2018 6:40 AM  
To: Dave Manoukian  
Cc: Joe Paniagua; Joseph Anile  
Subject: Data

Dave,

We need the remainder of the data ASAP.

Please let us know when we can expect it.

5/7/2019

Yahoo Mail - FW: Data

Mike




***Michael DaCorta***

CEO & Chief Investment Officer

Cell: 941-807-9933

Email: [mdacorta@oasisig.com](mailto:mdacorta@oasisig.com)

[www.oasisig.com](http://www.oasisig.com)

-  Oasis\_Backoffice\_Accounts.csv  
709B
-  Oasis\_Client\_Accounts.csv  
15.1kB
-  Oasis\_IB\_Accounts.csv  
14.7kB

# **EXHIBIT E**

## Account Statement Summary

---

From: Compliance <compliance@atcbrokers.com>  
To: janile@oasisig.com  
Cc: jpaniagua@oasisig.com  
Sent: April 18, 2019 2:35:05 PM EDT  
Received: April 18, 2019 2:35:32 PM EDT  
Attachments: Account Balance Notice.pdf

Hello,

Per your request, kindly find the attached letter with balance confirmation and supporting equity reports.

As the PDF contains sensitive client information, it has been password protected with your ATC account number.

Should you require anything further, please let us know.

Regards,

ATC BROKERS  
Compliance Department

Email: [compliance@atcbrokers.com](mailto:compliance@atcbrokers.com)

Int'l Main: 44 (0) 20 3318 1399

US Main: 1 818 545 8400

Web: [atcbrokers.com](http://atcbrokers.com)

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**From:** [jpaniagua@oasisig.com](mailto:jpaniagua@oasisig.com) [mailto:[jpaniagua@oasisig.com](mailto:jpaniagua@oasisig.com)]

**Sent:** Monday, April 15, 2019 2:04 PM

**To:** Dave Manoukian

**Subject:** RE: Account Statement Summary

Dave,

Can you put in writing on your letter head in re to Oasis Global FX, S.A. the following:

- A) 12/31/2017 ending balance (Account – Account Statement Summary) of \$7,271,718.21 and
- B) 12/31/2018 ending balance (Account – Account Statement Summary) of \$3,142,404.42

This is for our auditor.

Please let me know if you would like to discuss further or if you need something else from me.

Thanks

Best regards,

Joe

***Joseph Paniagua***

Cell: 516-578-0623

Email: [jpaniagua@oasisig.com](mailto:jpaniagua@oasisig.com)





18<sup>th</sup> April 2019

RE: Account Balance Confirmation

To whom it may concern,

We hereby confirm that the end of year account balances of Oasis Global FX, S.A. holding account number OB60055 are as followed:

31<sup>st</sup> December 2017 – 7,271,718.21 USD

31<sup>st</sup> December 2018 – 3,142,404.42 USD

Included are end of year equity reports for supporting documents.

Should you require further details, please let us know.

A handwritten signature in black ink, appearing to read 'Jen Claudio', written over a horizontal line.

Jen Claudio  
Director and Chief Operating Officer

ATC BROKERS LTD.  
FCA REGULATED NO: 591361

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

BURTON W. WIAND, not individually  
but solely in his capacity as Receiver  
for OASIS INTERNATIONAL  
GROUP, LIMITED, *et al.*,

Plaintiff,

v.

ATC BROKERS, LTD., DAVID  
MANOUKIAN, and SPOTEX LLC,

Defendants.

CASE NO. 8:21-cv-01317-MSS-AAS

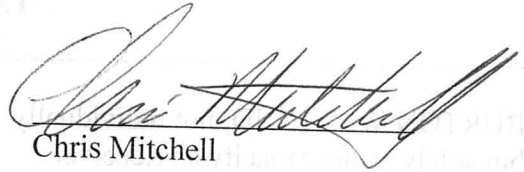
**DECLARATION OF CHRIS MITCHELL  
IN SUPPORT OF DEFENDANT  
SPOTEX, LLC'S MOTION TO DISMISS**

Chris Mitchell, of full age, pursuant to 28 U.S.C. § 1746, hereby declares as follows:

1. I have personal knowledge of all facts stated in this declaration, and if called to testify, I could and would testify competently thereto.
2. I am the Chief Operating Officer ("COO") of Spotex LLC ("Spotex").
3. As the COO of Spotex, I am responsible for overseeing day-to-day administrative and operational actions that occur at Spotex.
4. Spotex never directed any business towards Florida.
5. Spotex has no contacts in Florida.
6. Spotex never anticipated anyone in Florida would suffer any harm from any actions by Spotex.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 19, 2021

  
Chris Mitchell

DECLARATION OF CHRIS MITCHELL  
IN SUPPORT OF DEFENDANT  
SPOTEX, LLC'S MOTION TO DISMISS

I, the undersigned, being a duly qualified juror, hereby declare as follows:  
I have personal knowledge of all facts stated in this declaration, and I called to  
my attention and voluntarily competently testified  
I am the COO of Sporex, I am responsible for overseeing day-to-day administrative  
and operational actions that occur at Sporex  
Sporex never directed any business towards Florida  
Sporex has no contacts in Florida  
Sporex never conducted business in Florida and would suffer any harm from any actions  
by Sporex