

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

JAMES FREDERICK WALSH

Defendant.

Civil Action No. \_\_\_\_\_

COMPLAINT FOR INJUNCTIVE  
RELIEF, CIVIL MONETARY  
PENALTIES, AND OTHER EQUITABLE  
RELIEF UNDER THE COMMODITY  
EXCHANGE ACT

JURY TRIAL DEMANDED

Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”), by its attorneys, alleges as follows:

**I. INTRODUCTION**

1. From at least September 2019 to the present (the “Relevant Period”), Defendant James Frederick Walsh fraudulently solicited members of the public for the purported purpose of trading off-exchange leveraged or margined retail foreign currency (“forex”) on their behalves. Primarily using social-media platforms YouTube and Craigslist, and email, Walsh fraudulently marketed himself as a highly successfully forex trader who generated for his clients “average monthly returns of 8% -11%” or “a flat 3% guaranteed profit each month.” To achieve these fictitious results, Walsh falsely claimed to have access to “legal, inside information” about the direction in which forex markets will move. More recently—and after he received a cease and desist letter from the Texas State Securities Board (“SSB”) related to his fraudulent solicitations—Walsh falsely represented that he was earning even greater trading profits now that the COVID-19 pandemic had impacted the financial markets, claiming that “the returns in forex continue to grow as the rest of the financial world continues to suffer.”

2. In these and other solicitations, Walsh misrepresented and/or omitted material facts by, among other things: (1) falsely describing his trading experience, trading skills, and trading results; (2) failing to advise existing and/or prospective clients that he had no U.S.-based forex trading accounts and was not listed on any U.S.-based forex trading account as holding discretionary trading authority on behalf of the account holder(s); (3) by failing to advise existing and/or prospective clients that he was not registered with the Commission to act as a commodity trading advisor (“CTA”), and therefore was operating an unlawful business venture; (4) by failing to advise existing and/or prospective clients of the inability of any CTA to minimize or control the risks associated with forex trading, or to “guarantee” a profit, let alone a specific positive rate of return; and (5) by failing to advise existing and/or prospective clients that the Texas SSB had issued him a cease and desist letter as a result of his fraudulent solicitations, which he was failing to obey.

3. By this conduct, and the conduct further alleged herein, Walsh has engaged, is engaging, and is about to engage in fraud in violation of Sections 4b(a)(2)(A) and (C), and 4o(1) of the Commodity Exchange Act (“CEA” or “Act”), 7 U.S.C. §§ 6b(a)(2)(A), (C), 6o(1) (2018), and Commission Regulation (“Regulation”) 5.2(b)(1) and (3), 17 C.F.R. § 5.2(b)(1), (3) (2019), and has operated, is operating, and may be about to operate as an unregistered CTA in violation of Sections 4m(1) and 2(c)(2)(C)(iii)(I)(bb) of the Act, 7 U.S.C. §§ 6m(1), 2(c)(2)(C)(iii)(I)(bb) (2018), and Regulation 5.3(a)(3), 17 C.F.R. § 5.3(a)(3) (2019).

4. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a–1 (2018), the Commission brings this action to enjoin Walsh’s unlawful acts and practices and to compel his compliance with the CEA and the Regulations. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and

registration bans, restitution, disgorgement, rescission, an accounting, pre- and post-judgment interest, and such other relief as the Court deems necessary and appropriate.

5. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Walsh will continue to engage in the acts and practices alleged in this Complaint.

## **II. JURISDICTION AND VENUE**

6. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (2018) (federal question jurisdiction) and 28 U.S.C. § 1345 (2018) (jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). In addition, Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2018), provides that U.S. district courts have jurisdiction to hear actions brought by the Commission against a person that has engaged, is engaging, or is about to engage in any act or practice that violates any provision of the CEA or any rule, regulation, or order thereunder. Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (2018), subjects the forex solicitations and transactions at issue in this action to, among other things, Sections 4b, 4o, and 4m(1) of the Act, 7 U.S.C. §§ 6b, 6o, 6m(1) (2018), and Regulations 5.2(b)(1), (3), and 5.3(a)(3)(i), 17 C.F.R. § 5.2(b)(1), (3), 5.3(a)(3)(i) (2019), as further described below.

7. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2018), because Walsh transacts or transacted business in this District, and/or certain transactions, acts, practices, and courses of business alleged in this Complaint occurred, are occurring, or are about to occur within this District.

## **III. THE PARTIES**

8. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act and

Regulations. The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

9. Public records indicate that Defendant James Frederick Walsh is a legal resident of Boca Raton, Florida, though Walsh also may claim to reside in the Dominican Republic. Walsh solicits clients throughout the United States, including within the State of Texas and, more specifically, within the Western District of Texas, Austin Division. Walsh has never been registered with the Commission in any capacity.

#### IV. FACTS

##### A. Walsh Fraudulently Solicits Clients' Funds

10. Throughout the Relevant Period, Walsh solicited existing and/or prospective clients for the purported purpose of trading forex on their behalves in exchange for a percentage of the trading profits that he earned.

11. In particular, Walsh, a self-proclaimed forex "master trader," used internet social media platforms YouTube and Craigslist, email, the telephone, and text messages to solicit clients for a forex trading scheme that he claimed to operate and that he called the "Master Account Client Trading Program."

12. Walsh represented that, as part of his Master Account Client Trading Program, he placed forex trades in two "master accounts" that he controlled, and that his trades were "mirror[ed]" in "subaccounts" that held investor funds. The two master accounts purportedly differed based on the amount invested: one contained client investments ranging from \$3,000 to \$10,000; the other contained client investments greater than \$10,000.

13. Walsh claimed that, in his Master Account Client Trading Program, each client's "financial investment is leveraged due to multiple sub-accounts under the master account."

14. Walsh claimed that, as part of his Master Account Client Trading Program, he deposited sixty percent of forex trading profits into his clients' subaccounts weekly, keeping the remaining forty percent as compensation for his services.

15. At no point in his solicitations did Walsh limit his offer to trade forex to eligible contract participants ("ECP" or "ECPs"). Upon information and belief, funds received by Walsh in connection with his Master Account Client Trading Program were not provided by ECPs.

**B. Walsh's Fraudulent YouTube Video**

16. On or around September 19, 2019, Walsh posted, or had posted, on the internet video-sharing platform YouTube a video in which he offered participation in his Master Account Client Trading Program to the public, falsely claiming that his Master Account Client Trading Program's "current clients are averaging eight to eleven percent net per month on their total accounts" through his trades, "seventy-six percent" of which were "winners."

17. In this YouTube video, Walsh claimed to achieve these results by using information received from "live feeds," which allows him to "trade with the banks" that "move the market eighty percent of the time"—a trading strategy that Walsh called "target marketing" or "target trading."

18. In this YouTube video, Walsh offered to trade forex on behalf of members of the public in exchange for compensation equal to forty percent of the trading profits he generates.

19. At no point in the YouTube video did Walsh disclose that: (1) he had no U.S.-based forex trading accounts and was not listed on any U.S.-based forex trading account as holding discretionary trading authority on behalf of the account holder(s); (2) he was not authorized under the CEA to trade forex on behalf of U.S.-based clients; (3) he was operating an unlawful business venture because he was not lawfully registered to act as a CTA; or (4) no CTA can minimize or control the risks associated with trading forex.

20. At no point in the YouTube video did Walsh limit his offer to trade forex to ECPs.

**C. Walsh's Fraudulent Craigslist Solicitations**

21. On or around October 20, 2019, Walsh posted, or had posted, two solicitations on the classified advertisements website Craigslist. These two Craigslist solicitations employed misrepresentations and omissions of material facts to induce potential clients to transfer funds to forex trading accounts that Walsh would or could control.

**a. The Austin-Targeted Craigslist Solicitation**

22. In the first solicitation (the "Austin-Targeted Craigslist Solicitation"), on or around October 20, 2019, Walsh posted, or had posted, on Craigslist an Austin-targeted advertisement entitled "ARE YOU ONE OF THE FOREX RETAIL TRADERS THAT LOSE MORE MONEY THAN YOU [*sic*] (Austin, Texas)," which offered Austin-area residents, and the general public, participation in his Master Account Client Trading Program.

23. In the Austin-Targeted Craigslist Solicitation, Walsh falsely claimed to be a "Forex Master Trader" who: (a) "routinely achieves a 76% PLUS winning average" on his trades, and (b) could use leverage to provide clients "average monthly returns [of] 8% - 11% net of account balance" "without losing a dime."

24. In the Austin-Targeted Craigslist Solicitation, Walsh falsely claimed to achieve these fictitious results using "a proprietary access to sophisticated world bank charts" that allows him to "trade with the banks, not against them." Walsh further falsely claimed: "I receive their live feed charts daily, so I see what they are doing and when. This legal, inside information gives me a great advantage which I pass on you to."

25. At the end of the Austin-Targeted Craigslist Solicitation, Walsh provided his telephone number and invited readers to “CALL TODAY” to “TURN YOUR LOSSES INTO CONSISTENT GAINS NOW!”

26. At no point in the Austin-Targeted Craigslist Solicitation did Walsh advise prospective clients that: (1) he had no U.S.-based forex trading accounts and was not listed on any U.S.-based forex trading account as holding discretionary trading authority on behalf of the account holder(s); (2) he was not authorized under the CEA to trade forex on behalf of U.S.-based clients; (3) he was operating an unlawful business venture because he was not lawfully registered to act as a CTA; and (4) no CTA can minimize or control the risks associated with trading forex, or guarantee profitable trading.

27. At no point in the Austin-Targeted Craigslist Solicitation did Walsh limit to ECPs his offer of participation in his Master Account Client Trading Program.

**b. The Dallas-Targeted Craigslist Solicitation**

28. On or around October 20, 2019, Walsh posted, or had posted, on Craigslist a Dallas-targeted solicitation entitled “TURN YOUR CONSISTENT FOREX LOSSES INTO CONSISTENT DAILY GAINS! (Dallas, Texas)” (the “Dallas-Targeted Craigslist Solicitation”), which offered Dallas-area residents, and the general public, participation in his Master Account Client Trading Program.

29. In the Dallas-Targeted Craigslist Solicitation, Walsh falsely claimed to “currently average 8% - 11% per month net to client sub accounts!” and to have an “astounding 78% winning average!”

30. In the Dallas-Targeted Craigslist Solicitation, Walsh further claimed as follows:

If you decided to make your sub account a retirement fund, what could you expect to achieve?

\$3,000 at a low of 8% average per month (depending on compound interest) could get you up \$300,000 or more. YOU DO THE MATH!

\$5,000 at a low of 8% average per month (depending on compound interest) could get you up \$500,000 or more. YOU DO THE MATH!

31. At the end of the Dallas-Targeted Craigslist Solicitation, Walsh provided his telephone number and invited members of the public to “CALL TODAY” to “TURN YOUR LOSSES INTO CONSISTENT GAINS NOW!”

32. At no point in the Dallas-Targeted Craigslist Solicitation did Walsh advise prospective clients that: (1) he had no U.S.-based forex trading accounts and was not listed on any U.S.-based forex trading account as holding discretionary trading authority on behalf of the account holder(s); (2) he was not authorized under the CEA to trade forex on behalf of U.S.-based clients; (3) he was operating an unlawful business venture because he was not lawfully registered to act as a CTA; or (4) no CTA can minimize or control the risks associated with trading forex, or guarantee profitable trading.

33. At no point in the Dallas-Targeted Craigslist Solicitation did Walsh limit to ECPs his offer of participation in his Master Account Client Trading Program.

#### **D. Texas SSB’s Investigation of Walsh’s Fraud**

34. On or around November 19, 2019, a Texas SSB Investigator reviewed the Dallas-Targeted Craigslist Solicitation and contacted Walsh by telephone using the telephone number Walsh provided to discuss Walsh’s offer of participation in his Master Account Client Trading Program (the “November 19, 2019 Telephone Call”).

35. Beginning on the November 19, 2019 Telephone Call, the Texas SSB Investigator began to act undercover by posing as “Earl Franklin,” a potential client. Walsh was unaware that “Earl Franklin” was a Texas SSB investigator.

36. On the November 19, 2019 Telephone Call, and in other communications with the Texas SSB Investigator that continued through at least April 2, 2020, Walsh claimed to trade forex on behalf of others in exchange for compensation.

37. On the November 19, 2019 Telephone Call, and in other communications with the Texas SSB Investigator that continued through at least April 2, 2020, Walsh offered to trade forex on behalf of the Texas SSB Investigator in exchange for compensation. Specifically, Walsh described his Master Account Client Trading Program and the fees he charges for trading clients' funds in this program.

38. On the November 19, 2019 Telephone Call, and in other communications with the Texas SSB Investigator that continued through at least April 2, 2020, Walsh purported to explain his trading strategy. Specifically, Walsh again falsely claimed to receive information by “live feeds” that allows him to “trade with the banks” that “move the market eighty percent of the time”—a trading strategy Walsh called “target marketing” or “target trading.” That is, Walsh indicated that he obtains information about the directions of “the banks” trades before those trades are placed. Walsh also represented that he charges clients \$150 per month to purportedly “cover the costs” of these so-called “banker charts,” and that this \$150 monthly fee was the sole risk clients faced if they allowed Walsh to trade forex on their behalves.

39. On the November 19, 2019 Telephone Call, and in other communications with the Texas SSB Investigator that continued through at least April 2, 2020, Walsh again falsely represented that he has achieved average monthly returns between eight and eleven percent by trading on behalf of clients while at the same time minimizing the risk of forex trading, falsely claiming that trading in his Master Account Client Trading Program is “risk free.”

40. Following the November 19, 2019 Telephone Call, Walsh sent the Texas SSB Investigator an email dated November 19, 2019 in which Walsh represented that he directs clients to open their so-called subaccounts with FX Choice, a broker located in Belize where his so-called master accounts are held. At no time did Walsh advise the Texas SSB Investigator (or any other potential recipients of the same or similar emails) that FX Choice is not registered with the Commission as a Retail Foreign Exchange Dealer, or in any other capacity, and therefore cannot lawfully open accounts or engage in retail forex transactions with U.S. citizens.

41. At no point in his communications with the Texas SSB Investigator (or any other potential recipients of the same or similar emails) did Walsh state that: (1) he had no U.S.-based forex trading accounts and was not listed on any U.S.-based forex trading account as holding discretionary trading authority on behalf of the account holder(s); (2) he was not authorized under the CEA to trade forex on behalf of U.S.-based clients; (3) he was operating an unlawful business venture because he was not lawfully registered to act as a CTA; or (4) no CTA can minimize or control the risks associated with trading forex, or guarantee profitable trading.

42. At no point in his communications with the Texas SSB Investigator (or any other potential recipients of the same or similar emails) did Walsh limit to ECPs his offer of participation in his Master Account Client Trading Program.

**E. Texas SSB's Cease and Desist Order**

43. On February 7, 2020, Joe Rotunda, Director of Texas SSB's Enforcement Division sent a Cease and Desist letter to Walsh by email (the "Cease and Desist Letter"). The Cease and Desist Letter stated that Walsh, through his solicitations, was violating the registration and disclosure provisions of the Texas Securities Act and requested that Walsh "immediately cease and desist from offering the investments until you are fully compliant with the statutory and registration requirements" of the Texas Securities Act. Although the Cease and Desist Letter

requested a response by 12:00 PM on February 10, 2020, Walsh did not immediately respond to the Cease and Desist Letter.

44. On February 18, 2020, Justin Stoll and Seth Oufnac, employees of the Texas SSB's Enforcement Division, spoke with Walsh about the Cease and Desist Letter and his failure to respond. On the call, Walsh also confirmed his email address.

45. On February 18, 2020, after the telephone call with Walsh, Stoll resent the Cease and Desist Letter to Walsh by email. On the same day, Walsh replied to Stoll's email, writing "I read the letter and agree to cease and disist [*sic*]."

**F. Walsh's Violation of the Cease and Desist Letter**

46. On February 24, 2020, the Texas SSB Investigator, continuing his undercover investigation of Walsh, emailed Walsh to express interest in investing in Walsh's Master Account Client Trading Program.

47. On February 25, 2020, Walsh replied to the Texas SSB Investigator, among other things, "ready when you are" and suggested that the Texas SSB Investigator call him that night.

48. Beginning on February 29, 2020, Walsh incorporated in his solicitations statements related to the COVID-19 global pandemic and its effects on the economy and the financial markets.

49. In an email to the Texas SSB Investigator on February 29, 2020, Walsh falsely stated "TIME TO MAKE SOME SERIOUS MONEY[,] I CLIENT [*sic*] JUST OPENED AN ACCOUNT FOR 16 K ON MONDAY AND MADE HIM 9.29% IN A WEEK !! [*sic*]"

50. In an email to the Texas SSB Investigator on March 15, 2020, Walsh falsely stated:

Regardless of the business you are in I hope that out of all the turmoil [of] the last few weeks about the virus and its massive effects on the world's financial market, you can see your exposure

and what can happen if you don't have a "safe haven" for needed funds? The last 3 weeks, while everyone was losing, I took a 16 k account and made \$6500 in Forex!!! That's 40% . . . . The world is entering a "Bear market" and recession is just around the corner. Have you asked yourself how do I make a living if I cannot go out of my house and take care of family if I don't have a supplemental income source? . . .

what is the true "safe haven" ? [IT'S] FOREX! No matter what, this \$ 6 trillion dollar a day monster just keeps on making professional traders and their clients['] money. This business is the only one that I know that is 'recession proof' you just have to be on the banks side as they win 94% of the time regardless of the problems in the rest of the [w]orld! and the bank charts I work with give me that information[.]

I would think after this past two weeks it has become very clear to you that the writing is on the wall and how . . . important an asset that the FOREX EXPERIENCE can be to your life and well being[.] If you still have an interest in this avenue call me or email me for more info on this opportunity[.]

51. In an email to the Texas SSB Investigator on March 26, 2020, Walsh falsely stated "Earl you need to call me anytime today as [I] have a lot more information and exactly why everyth[i]ng else is going to hell and why forex and the bankers charts sh[ine. I] have taken a 100k account [t]o as of this writing [ ] 143k plus and counting[. L]ooking for your call . . . ."

52. In a telephone call with the Texas SSB Investigator on March 26, 2020, Walsh again offered to trade forex on the Texas SSB Investigator's behalf in exchange for forty percent of profits earned through his trading. To induce the Texas SSB Investigator to give him money, Walsh made a number of misrepresentations including the following:

- "The forex market is recession proof."
- "Because of the volatility and because of the charts I have, and because of . . . what I've learned, it's a duck shoot."

- That these charts “give us an indication of what the market’s gonna do and that that’s magic.”
- “I’ve taken a \$100,000 account from a week ago Monday to \$146,000. Ten days.”
- “I’m making more money now in . . . this recession and the corona virus thing than before it started.”
- “My winning percentage is about seventy-eight percent.”
- That “the smartest thing [the Texas SSB Investigator] could ever do” would be to transfer his parents’ retirement accounts to Walsh’s Master Account Client Trading Program for Walsh to trade.
- That a retiree who had rejoined the workforce because he was not earning enough to live on and was laid off would be a “perfect candidate” for Walsh’s Master Account Client Trading Program.

53. In an email to the Texas SSB Investigator on March 26, 2020, Walsh stated “N[i]ce chatting with you yesterday[.] [I] always get excited when [I]talk about this amazing financial safe haven so excuse me if [I] talk to[o] fast but [I] am so convinced that it is the answer to financial freedom and a very safe way to make money[.]” Walsh also wrote that his forex broker is FX Choice and that his personal contact at FX Choice, would assist the Texas SSB Investigator in opening a subaccount and in answering any questions the Texas SSB Investigator had. Walsh further asked the Texas SSB Investigator to provide contact information for other people that may be interested in having Walsh trade forex on their behalves.

54. In an email to the Texas SSB Investigator on April 2, 2020, Walsh falsely stated:

I WANTED TO UPDATE YOU ON THE CURRENT STATUS OF THE FOREX. MARKET FOR ONE LAST OPPORTUNITY TO GET INVOLVED AS I HAVE TO NOW FOCUS ON CURRENT CLIENTS WHO HAVE SEEN THE WRITING ON

THE WALL AND CONTINUE TO BUILD THEIR MARGIN ACCOUNTS WITH ADDITIONAL CASH AND PROFITS FROM CURRENT TRADING. I[']M SURE YOU SEE WHAT IS HAPPENING IN THE FINANCIAL MARKETS AROUND THE WORLD AND YOU REALIZE THAT WE ARE NOT IN A "RECESSION" BUT THE BEGINNING OF A "DEPRESSION" AND RECOVERY WILL BE LONG AND DIFFICULT...

AS THIS DEVASTATING SAGA UNFOLDS I GET MORE EXCITED ABOUT THE PROFESSION I HAVE CHOSEN 10 AGO YEARS [sic] IN FOREX AS IT CONTINUES TO PUT MONEY IN THE POCKETS OF MY CLIENTS AND MYSELF .

IF YOU WANT TO LEARN TO TRADE, THE BEST WAY IS TO OPEN A SUBACCOUNT UNDER MY MASTER ACCOUNT THAT ONLY YOU HAVE ACCESS TO SO YOU CAN START ADDING FROM 8 - 11 % PROFITS TO YOUR ACCOUGHT [sic] EACH MONTH OR YOU CAN CHOSE [sic] TO BE PAID A FLAT 3% GUUARANTEE [sic] EACH MONTH.

ON THE 16TH OF MARCH I OPENED A 100K TRADING ACCOUNT FOR A CLIENT AND TODAY'S BALANCE IS IN EXCESS OF 150K!! ( SEE ATTACHED PIC OF ACCOUNT LAST WEEK). 50% INCREASE IN PROFITS IN TWO WEEKS ! HOW DID THAT HAPPEN ? WHILE OTHER FINANCIAL MARKETS ARE FAILING THE FOREX MARKET[']S VOLUME IN THE LAST MONTH HAS TRIPLED ! AS AN EXAMPLE, IF I HAD TRADED AN ACCOUNT FOR YOU 1 MONTH AGO AND WE MADE \$100 PROFIT [sic]. IF I TRADED THE SAME ACCOUNT FOR YOU TODAY WE WOULD HAVE MADE \$300! THE RETURNS IN FOREX CONTINUE TO GROW AS THE REST OF THE FINANCIAL WORLD CONTINUES TO SUFFER.

AS STATED BEFORE THE FOREX MARKET IS[ "RECESSION PROOF" AS YOU ALWAYS HAVE A CHOICE WHAT SIDE OF THE TRADE YOU WANT TO BE ON AND FOR THE PAST 4 YEARS I HAVE CHOSEN TO TRADE[ "WITH THE BANKS". I RECEIVE DAILY BANK CHARTS GIVING ME THE BANKS DIRECTIONS AND SINCE THEY WIN 94% THERE IS NO OTHER CHOICE[.]

...

THIS FOREX PROGRAM WILL PROVIDE YOU WITH SOME BREATHING ROOM KNOWING THAT EVERY WEEK YOU HAVE A PLACE TO DRAW CASH PROFITS. EACH FRIDAY

PROFITS ARE DETERMINED AND PAID THE FOLLOWING MONDAY.

(Capitalization in original.)

55. Walsh's claims that he generated profits trading forex on behalf of clients were false, as were his statements about the forex markets being "recession proof" or a "safe haven" from the economic distress resulting from the COVID-19 global pandemic, or otherwise wrongly downplaying the risks associated with trading forex.

56. At no point in his communications with the Texas SSB Investigator after February 18, 2020 (or any other potential recipients of the same or similar emails) did Walsh state that: (1) he had no U.S.-based forex trading accounts and was not listed on any U.S.-based forex trading account as holding discretionary trading authority on behalf of the account holder(s); (2) he was not authorized under the CEA to trade forex on behalf of U.S.-based clients; (3) he was operating an unlawful business venture because he was not lawfully registered to act as a CTA; (4) no CTA can minimize or control the risks associated with trading forex, or guarantee profitable trading; or (5) the Texas SSB had issued him the Cease and Desist Letter as a result of his fraudulent solicitations, which he was failing to obey.

## **V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND REGULATIONS**

### **COUNT I**

#### **FRAUD IN CONNECTION WITH FOREX CONTRACTS**

Violations of Section 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(2)(A), (C) (2018), and Regulation 5.2(b)(1) and (3), 17 C.F.R. § 5.2(b)(1), (3) (2019).

57. The allegations in the preceding paragraphs are re-alleged and incorporated herein by reference.

58. Under 7 U.S.C. § 6b(a)(2)(A) and (C), it is unlawful:

[F]or any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery . . . that is made, or to be made, for or on behalf of, or

with, any other person other than on or subject to the rules of a designated contract market—(A) to cheat or defraud or attempt to cheat or defraud the other person; . . . [or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person.

59. Section 2(c)(2)(C)(iv) of the Act, 7 U.S.C. § 2(c)(2)(C)(iv) (2018), provides that 7 U.S.C. § 6b applies to retail forex transactions, agreements, and contracts that are offered to, or entered into with, a person that is not an ECP “as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.”

60. In the case of an individual, Section 1a(18)(A)(xi) of the Act, 7 U.S.C. § 1a(18)(A)(xi) (2018), defines an ECP to mean a person “acting for its own account . . . who has amounts invested on a discretionary basis, the aggregate of which is in excess of—(I) \$10,000,000; or (II) \$5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.”

61. Under 17 C.F.R. § 5.2(b) it is unlawful:

[F]or any person, by use of the mails, or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction: (1) to cheat or defraud or attempt to cheat or defraud any person; . . . or (3) willfully to deceive or attempt to deceive any person by any means whatsoever.

62. As described herein, Walsh violated 7 U.S.C. § 6b(a)(2)(A) and (C) by cheating or defrauding, or attempting to cheat or defraud, other persons, and/or by willfully deceiving or attempting to deceive other persons in connection with the offering of, or entering into, the off-exchange leveraged or margined forex transactions with non-ECPs by, among other things, by making misrepresentations and omissions of material facts to potential and actual clients about:

(1) his trading abilities and past returns, including his actual clients' average profits and rates of return, that he can provide "a flat 3% guaranteed profit each month," and that seventy-eight percent of his forex trades were "winners"; (2) the existence of his actual clients and his trades on their behalf; (3) his access to purported specialized information that allows him to trade in the same direction as "the banks" and thereby minimize market risk; (4) his ability to predict movements in the forex market; (5) the riskiness of investments in forex, including that the forex market is "recession proof," a "safe haven" from the economic fallout caused by the COVID-19 global pandemic; (6) by knowingly failing to inform actual and prospective clients that Walsh has no U.S.-based trading accounts; (7) by knowingly failing to inform actual and prospective clients that Walsh is not authorized to trade forex on behalf of clients; (8) by knowingly failing to inform actual and prospective clients that Walsh and is subject to—and violating—a cease and desist order issued by the Texas SSB; and (9) by knowingly failing to inform actual and prospective clients that Walsh was operating an unlawful business venture because he was not lawfully registered to act as a CTA.

63. Walsh committed the acts and practices described above using instrumentalities of interstate commerce, including the use of emails and interstate wires for the transfer of funds.

64. Walsh committed the acts and practices described herein willfully, or with reckless disregard for the truth.

65. Each act of misrepresentation or omission of material fact, and/or act or omission that did or attempted to cheat and/or deceive another, including but not limited to those specifically alleged herein, and each day such act or omission occurred, is alleged as a separate and distinct violation of 7 U.S.C. § 6b(a)(2)(A) and (C), and of 17 C.F.R. § 5.2(b)(1) and (3).

**COUNT II**

**FAILURE TO REGISTER AS COMMODITY TRADING ADVISOR**

Violations of Sections 4m(1) and 2(c)(2)(C)(iii)(I)(bb) of the Act,  
7 U.S.C. §§ 6m(1), 2(c)(2)(C)(iii)(I)(bb) (2019), and  
Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2019)

66. The allegations in the preceding paragraphs are re-alleged and incorporated herein by reference.

67. 7 U.S.C. §§ 6m(1) and 2(c)(2)(C)(iii)(I)(bb), and 17 C.F.R. § 5.3(a)(3)(i) require all CTAs, as defined in Regulation 5.1(e)(1), 17 C.F.R. § 5.3(e)(1) (2019), to register with the Commission.

68. Pursuant to 17 C.F.R. § 5.1(e)(1), a CTA is defined, in relevant part, as any person who exercises discretionary trading authority or obtains written authorization to exercise discretionary trading authority over any account on or on behalf of any person that is not an ECP, in connection with retail forex transactions.

69. During the Relevant Period, Walsh acted as a CTA, as defined in 17 C.F.R. § 5.1(e)(1), by exercising discretionary authority or obtaining written authorization to exercise written trading authority over accounts of persons who were not ECPs in connection with retail forex transactions.

70. Accordingly, Walsh violated 7 U.S.C. §§ 6m(1) and 2(c)(2)(C)(iii)(I)(bb), and 17 C.F.R. § 5.3(a)(3)(i) by acting as a CTA while not being registered as a CTA with the Commission.

71. Each instance during the Relevant Period in which Walsh acted as an unregistered CTA, including but not limited to those specifically alleged herein, and each day such unregistered conduct took place, is alleged as a separate and distinct violation of 7 U.S.C. §§ 6m(1) and 2(c)(2)(C)(iii)(I)(bb), and 17 C.F.R. § 5.3(a)(3)(i).

**COUNT III**  
**FRAUD BY A COMMODITY TRADING ADVISOR**  
Violations of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2018)

72. The allegations set forth in the preceding paragraphs are re-alleged and incorporated herein by reference.

73. Pursuant to 7 U.S.C. § 6o(1), it is unlawful for a CTA to use of the mails or any other means or instrumentality of interstate commerce, directly or indirectly:

- (A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or
- (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

74. Pursuant to Section 1a(12) of the Act, 7 U.S.C. § 1a(12) (2018), a CTA is defined in relevant part as any person, who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value or advisability of trading in, among other things, contracts of sale of a commodity for future delivery or retail forex transactions.

75. As alleged herein, during the Relevant Period, Walsh acted as a CTA by exercising discretionary trading authority in exchange for financial compensation or by obtaining written authorization to exercise written trading authority over any account for or on behalf of persons that were not ECPs in connection with leveraged forex transactions.

76. Walsh violated 7 U.S.C. § 6o(1) in that he employed or is employing a device, scheme, or artifice to defraud clients and/or prospective clients; and/or engaged or is engaging in transactions, practices, or a course of business which operated or operates as a fraud or deceit

upon clients or prospective clients, including without limitation: misrepresenting and/or omitting material facts in solicitations and communications with clients, and acting as a CTA without registering as such as required by the Act and Regulations.

77. Each act of fraudulent solicitation and/or deception, including but not limited to those specifically alleged herein, and each day of such fraudulent solicitation and/or deception, is alleged as a separate and distinct violation of 7 U.S.C. § 6o(1).

## VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), and pursuant to the Court's inherent equitable powers, enter:

A. An order finding Walsh violated Sections 4b(a)(2)(A) and (C), and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(A), (C), 6o(1) (2018), and Regulations 5.2(b)(1) and (3), and 5.3(a)(3)(i), 17 C.F.R. § 5.2(b)(1), (3), 5.3(a)(3)(i) (2019);

B. An order of permanent injunction prohibiting Walsh and any of his agents, servants, employees, successors, assigns, attorneys, holding companies, alter egos, and persons in active concert or participation with him, from directly or indirectly:

- (i) engaging in conduct in violation of 7 U.S.C. §§ 6b(a)(2)(A) and (C), 6o(1), 6m(1), 2(c)(2)(C)(iii)(I)(bb); and 17 C.F.R. §§ 5.2(b)(1) and (3), and 5.3(a)(3)(i);
- (ii) trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2018));
- (iii) entering into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2019)) for his own personal account or for any account in which he has a direct or indirect interest;

- (iv) having any commodity interests traded on his behalf;
- (v) controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
- (vi) soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- (vii) applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2019);
- (viii) acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2019)), agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with the Commission, except as provided for in 17 C.F.R. § 4.14(a)(9); and
- (ix) engaging in any business activities related to commodity interests;

C. An order directing Walsh, as well as any third-party transferee and/or successor thereof to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act and Regulations as described herein, and pre- and post-judgment interest;

D. An order directing Walsh and any successors thereof, to make full restitution to every person or entity who has sustained losses proximately caused by the violations described herein, including pre- and post-judgment interest;

E. An order directing Walsh and any successors thereof, to provide a full accounting of all client funds he has received during the Relevant Period as a result of the acts and practices that constituted violations of the Act and Regulations described herein;

F. An order directing Walsh and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between him and any clients whose funds were received by him as a result of the acts and practices that constituted violations of the Act and Regulations, as described herein;

G. An order directing Walsh to pay a civil monetary penalty assessed by the Court, in an amount not to exceed the penalty prescribed by Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1) (2018), as adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, 129 Stat. 584 (2015), title VII, Section 701, *see* Regulation 143.8, 17 C.F.R. § 143.8 (2019), for each violation of the Act and Regulations, as described herein;

H. An order requiring Walsh to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2018); and

I. An order providing such other and further relief as the Court deems proper.

\* \* \* \* \*

Date: July 7, 2020

Respectfully submitted,

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