

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

U.S. COMMODITY FUTURES TRADING)
COMMISSION,) CASE NO. _____)
)
Plaintiff,)
)
v.) **COMPLAINT FOR INJUNCTIVE AND**
) **OTHER EQUITABLE RELIEF AND**
) **FOR CIVIL MONETARY PENALTIES**
Claudio Aliaga, an individual, and) **UNDER THE COMMODITY**
CMA Capital Management, LLC, a Florida) **EXCHANGE ACT, AS AMENDED, 7**
limited liability company,) **U.S.C. §§ 1 *et seq.***
)
Defendants,)
)
and)
)
Betty Aliaga and CMA Global Investment)
Fund, LLC, a Florida limited liability)
company,)
)
Relief Defendants.)
)

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

I. **SUMMARY**

1. From at least March 2007 and continuing through the present, Claudio Aliaga (“Aliaga”) and CMA Capital Management, LLC (“CMA”) (collectively, “Defendants”) have fraudulently solicited at least \$4.5 million from at least 125 members of the general public for the purported purpose of trading a pooled investment in connection with agreements, contracts or transactions in foreign currency that are margined or leveraged (“forex”). From June 18, 2008, through the present (the “Relevant Period”), at least 80 retail investors deposited at least \$2.2

million in investment funds into bank accounts in the name of CMA and CMA Global Investement (*sic*) Fund, LLC (“CMA Global”).

2. In soliciting actual and prospective customers to invest funds, Defendants, directly and through others, made the following fraudulent omissions and misrepresentations, among others: (1) the omission that Aliaga misappropriated customer funds; (2) the omission that customer funds were not all used to trade forex; (3) that Aliaga was a successful forex trader; (4) that Aliaga’s forex trading generated sufficient returns to consistently pay customers 2 – 3% returns per month; and (5) that there was no risk of loss of customers’ principal.

3. Upon information and belief, Defendants operated a “Ponzi” scheme by paying so-called returns to customers with those customers’ own money or the money of other customers. In doing so, Defendants misappropriated customer funds. Upon information and belief, Defendants also misappropriated customer funds for personal use, transferred these funds to the bank accounts of other Aliaga businesses, and channeled a significant portion of the customer funds to Relief Defendant, Betty Aliaga.

4. To conceal and perpetuate their fraud, Defendants issued or caused to be issued false account statements to customers reflecting the promised returns based on Defendants’ purportedly successful trading of foreign currency contracts. Defendants’ false account statements concealed their misappropriation, lack of trading and/or trading losses.

5. By virtue of this conduct and the further conduct described herein, from the effective date of the CFTC Reauthorization Act of 2008 (“CRA”), June 18, 2008, through the present, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation of Sections 4b(a)(2)(A)-(C) of the Commodity Exchange Act (the “Act”) as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the “CFTC

Reauthorization Act of 2008”), § 13102, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

6. Aliaga committed the acts and omissions described herein within the course and scope of his employment at CMA. Therefore, CMA is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation (“Regulation”) 1.2, 17 C.F.R. § 1.2 (2009), as principal for its agent’s violations of the Act, as amended by the CRA.

7. Aliaga is a controlling person of CMA and did not act in good faith or knowingly induced, directly or indirectly, CMA’s violative acts. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Aliaga is liable for CMA’s violations of the Act.

8. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2), the Commission brings this action to enjoin Defendants’ unlawful acts and practices and to compel their compliance with the Act, as amended by the CRA, and to further enjoin Defendants from engaging in any commodity-related activity. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

9. Unless restrained and enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below.

II. JURISDICTION AND VENUE

10. Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2006), authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such

person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of the Act or any rule, regulation, or order thereunder.

11. The Commission has jurisdiction over the matters alleged herein beginning June 18, 2008, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2).

12. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because Defendants transacted business in the Southern District of Florida and certain of the transactions, acts, practices, and courses of business alleged occurred, are occurring, and/or are about to occur within this District.

III. PARTIES

Plaintiff

13. **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.*, and Regulations, 17 C.F.R. §§ 1.1 *et seq.* The CFTC maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

Defendants

14. **CMA Capital Management, LLC** is a Florida limited liability company formed on May 1, 2006, with its principal place of business at 8100 Oak Lane, Suite 401, Miami Lakes, Florida. CMA has never been registered with the Commission. CMA is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment bank holding company, and is not an associated person of such entities.

15. **Claudio Aliaga** resides in Davie, Florida, and is the managing member and owner of CMA. Aliaga is a signatory on the bank accounts of CMA and has been the authorized trader

on the forex trading accounts of CMA and CMA Global. Aliaga has never been registered with the Commission in any capacity. Aliaga is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment bank holding company, and is not an associated person of such entities.

Relief Defendants

16. **CMA Global Investement (sic) Fund LLC** is a business entity organized in Florida on May 12, 2006. Its registered address is 8100 Oak Lane, Suite 401, Miami Lakes, Florida. CMA is listed in Florida corporate records as the managing member of CMA Global. According to a website (www.cmafinancialgrp.com) for CMA and various affiliated firms, CMA Global is purportedly a forex hedge fund for accredited investors and is managed by CMA. CMA Global has never been registered with the Commission in any capacity. CMA Global is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment bank holding company, and is not an associated person of such entities.

17. **Betty Aliaga** resides in Davie, Florida, and is the wife of Defendant Claudio Aliaga. Betty Aliaga has never been registered with the Commission in any capacity.

IV. FACTS

18. Since at least March 2007, Aliaga and CMA have fraudulently solicited and accepted funds from retail investors for the purpose of trading leveraged or margined forex transactions.

19. Prospective customers often learned of CMA from family members or friends who, based on their own apparent experience, described Aliaga as an experienced and successful forex trader. The prospective customers would then meet with Aliaga in the CMA office, where

he personally solicited them to deposit funds with CMA for the purported purpose of trading forex.

20. In such meetings, and throughout the period of time that such individuals remained Defendants' customers, Aliaga omitted material facts and made material misrepresentations. Based on Aliaga's omissions and misrepresentations, prospective customers opened accounts with CMA. To open an account with CMA, prospective customers were directed to deposit funds into bank accounts held in the name of CMA and/or CMA Global, and execute a promissory note with CMA.

21. With regard to material omissions, from June 18, 2008, to the present, Aliaga failed to disclose to actual and prospective customers the following facts:

that he misappropriated customer funds for personal use;

that, contrary to assertions that he took customer funds and traded forex contracts on their behalf, he only traded a portion of customer funds; and

that, contrary to assertions that he took customer funds and traded forex contracts on their behalf, he used customer funds to make payments to other customers.

Aliaga was required to disclose such material information because he falsely conveyed to actual and prospective customers the impression that he traded customer funds successfully, and that such trading generated profits for CMA customers. Aliaga conveyed this false impression through the issuance of purported "promissory notes" to customers, through false monthly account statements issued to customers, and through representations concerning his purported success as a forex trader. Aliaga was required to disclose the truth about his misappropriation and the actual use of customer deposits at the time he met with actual and prospective customers, and every day that customers maintained an open account with CMA.

22. With regard to material misrepresentations, in September 2007, March 2008, August 2008, and September 2008, Aliaga told prospective customers that he had gained experience successfully trading forex for close friends and family and was now accepting funds to participate in a pool for which he managed the forex trading. In the same face-to-face meetings, Aliaga also guaranteed these prospective customers a 2 – 3% monthly return on their investment that would be based on profits from his forex trading. Furthermore, in the September 2007, March 2008, and September 2008 meetings, Aliaga guaranteed prospective customers that there would be no risk to their principal investment. For example, in September 2007, Aliaga told one prospective customer that the only risk to her investment would be if he ran off with her money.

23. Aliaga's representations to actual and prospective customers that he was a successful trader, he earned 2 – 3% per month in trading profits, and customer funds were not at risk, were false.

24. Since at least March 2007, CMA has received at least \$4.5 million from at least 125 members of the general public for the purported purpose of trading forex. During this same period, CMA and CMA Global deposited only approximately \$1,929,366.65 into three known forex trading accounts. Aliaga, the only person with trading authority, executed margined or leveraged forex transactions in these accounts, which were held in the names of CMA and CMA Global. Aliaga's trading in these accounts typically resulted in a loss each month.

25. Customer investment funds were deposited into bank accounts in the names of both CMA and CMA Global. Aliaga was sole signatory to three Bank of America accounts in the name of CMA. Julio Fabregat, who was a CMA employee as well as a manager of CMA Global, was signatory to one Bank of America account in the name of CMA Global.

26. Two of the three forex accounts opened by Defendants and managed by Aliaga were held at OANDA Corporation (“OANDA”), a futures commission merchant (“FCM”) registered with the Commission. With regard to the first account, from August 2006 through July 2008, Aliaga managed a forex account in the name of CMA Global at OANDA. The total amount of customer funds deposited in this forex account was \$615,000. Trading in this account was profitable in only eight (8) of the twenty-four (24) months in which trades were made. The account sustained total trading losses of \$495,780.51. Thus, Aliaga’s trading in this account was not successful. From February 2008 through February 2009, Aliaga managed a second forex trading account in the name of CMA at OANDA. The total amount of customer funds deposited in this forex account was \$630,000. This account made aggregate profits of \$112,829.97. However, out of the twelve (12) months in which trading occurred, the account sustained net trading losses in eight (8) months.

27. From August 2008 through December 2008, Aliaga managed a third forex trading account in the name of CMA at Global Forex Trading (“GFT”), a division of Global Futures & Forex Ltd., a registered FCM. The total amount of customer funds deposited in this forex account was \$684,366.65. The GFT account sustained total trading losses of \$290,173.95. Thus, Aliaga’s trading in this account was not successful.

28. Since March 2007, Defendants sustained total net trading losses in all three forex trading accounts of approximately \$673,000. Thus, during this period, Aliaga’s trading was not successful.

29. Aliaga knew that he created the false impression that he successfully traded forex on behalf of customer because he was responsible for the issuance of purported “promissory notes” to customers, the transmittal of false monthly account statements to customers reflecting

purported profits from forex trading, and because he also made representations to customers that he was a successful forex trader.

30. Aliaga also knew that the representations set forth in paragraphs 22 and 23 above were false or were reckless with regard to their accuracy because, as the trader for the CMA forex accounts he knew that:

- the trading of forex contracts carries a risk of loss;
- his forex trading did not earn 2 to 3% per month; and
- his forex trading was not successful.

31. Aliaga and CMA comingled customers' investment funds deposited into CMA and CMA Global bank accounts with funds from other CMA businesses and personal interests. Funds were transferred between the accounts of CMA and CMA Global, as well as a UBS account in Aliaga's name in Switzerland, which was closed in August 2008. The CMA bank accounts, into which the vast majority of customer funds were deposited, were used to pay business expenses for CMA as well as other Aliaga businesses, including New Concept Mortgage. For example, expenditures were made for items such as:

- Monthly mortgage payments;
- Medical expenses;
- Travel expenses;
- Food and clothing;
- Monthly loan payments for two luxury cars;
- Gasoline; and
- Other personal expenses.

32. In addition, Aliaga withdrew cash, paid himself approximately \$438,000, and transferred nearly \$1 million to his wife, Relief Defendant Betty Aliaga. From April 2007 through February 2009, numerous checks were issued and wire transfers made to Betty Aliaga, in amounts ranging from \$700 to \$260,000. The records for CMA and CMA Global bank

accounts show no deposits by Betty Aliaga other than a deposit of \$8,680 from a joint account held with her husband and, on information and belief, she was not an employee or customer of CMA or CMA Global. Therefore, Betty Aliaga was not entitled to the funds she received from CMA.

33. In order to conceal and perpetuate the Defendants' fraud, Aliaga knowingly provided customers with false monthly account statements that reported purported account balances and accrued interest of two (2) to three (3) percent of the principal they deposited. The account statements never showed a loss despite the fact that Aliaga's trading of forex accounts in the name of CMA and CMA Global typically lost money. Aliaga knew these statements were false or was reckless in regard to their accuracy since, as the trader for the CMA forex accounts, he knew whether his trading was profitable, and that for many months he failed to generate a profit.

34. Since January 2009, Defendants have failed to make monthly payments to customers as promised, and have failed to honor redemption requests of customers. In or about March 2009, CMA issued a letter to customers acknowledging that CMA failed to make payments as promised. The letter was written on CMA letterhead and purportedly signed by Aliaga.

35. The March 2009 letter assured customers that the problems "should be resolved in the next few months." The letter also stated that, "in the meantime we [CMA] will start by paying a minimum of 0.5% monthly and will be increasing this in the shortest time possible to get to the usual accustomed interest." The letter asked customers to have patience and allow CMA time to "get back on track" and repay their investment funds.

36. Between March 2009 and the present, CMA has made partial payments to at least one customer but has failed to make full payments or return to the customers their principal despite repeated requests.

37. Neither Defendants nor the FCMs that were the counterparty to the forex transactions were financial institutions, registered broker dealers, insurance companies, bank holding companies, or investment bank holding companies or the associated persons of financial institutions, registered broker dealers, insurance companies, bank holding companies, or investment bank holding companies.

38. Some or all of Defendants' customers were not "eligible contract participants" as that term is defined in the Act. *See* Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12) (2006) (an "eligible contract participant," as relevant here, is an individual with total assets in excess of (i) \$10 million, or (ii) \$5 million and who enters the transaction "to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual").

39. The forex transactions conducted by Defendants at OANDA and GFT on behalf of their customers were entered into on a leveraged or margined basis. Defendants were required to provide only a percentage of the value of the forex contracts that they purchased.

40. The forex transactions conducted by Defendants neither resulted in delivery within two days nor created an enforceable obligation to deliver between a seller and a buyer that had the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these forex contracts remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

41. By virtue of their actions, from June 18, 2008, through the present, Defendants have engaged, are engaging, or are about to engage in acts and practices that violate Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE

**Violations of Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA,
to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C)
(Fraud in Connection with Forex)**

42. The allegations set forth in paragraphs 1 through 41 are re-alleged and incorporated herein by reference.

43. Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C), make it unlawful

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g), 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; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; [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.

Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, apply to Defendants' forex transactions "as if" they were a contract of sale of a commodity for future delivery. Section 2(c)(2)(C)(iv) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iv).

44. As set forth above, from at least June 18, 2008, through the present, in or in connection with forex contracts, made, or to be made, for or on behalf of or with other persons,

Aliaga cheated or defrauded, or attempted to cheat or defraud, customers or prospective customers, and willfully deceived or attempted to deceive customers or prospective customers by, among other things, knowingly: (i) misappropriating customer funds; (ii) omitting material information; (iii) falsely representing that the 2 – 3 % monthly return on investment was produced by Aliaga’s trading, when, in fact, Aliaga’s trading resulted in substantial losses, and the purported “profits” were paid to customers from existing customers’ original principal and/or from money invested by subsequent customers; and (iv) knowingly providing customers account statements that misrepresented the value of the customers’ investment as well as claiming that Aliaga’s trading was producing profits when, in fact, it was not, all in violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

45. Aliaga controlled CMA, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, CMA’s conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Aliaga is liable for CMA’s violations of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

46. The foregoing acts, misrepresentations, omissions, and failures of Aliaga occurred within the scope of his employment with CMA; therefore, CMA is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2009).

47. Each misrepresentation or omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

COUNT TWO

Disgorgement of Funds from Relief Defendants

48. Paragraphs 1 through 41 are re-alleged and incorporated herein by reference.

49. Relief Defendants received funds as a result of the Defendants' fraudulent conduct and misappropriation, and have been unjustly enriched thereby.

50. Relief Defendants have no legitimate entitlement to or interest in the funds received as a result of the Defendants' fraudulent conduct and/or misappropriation.

51. Relief Defendants should be required to disgorge funds up to the amount they received from Defendants' fraudulent conduct and misappropriation, or the value of those funds that they may have subsequently transferred to third parties.

VI. RELIEF REQUESTED

WHEREFORE, the CFTC respectfully requests that the Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers, enter:

a) An order finding that Defendants violated Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

b) An order of permanent injunction prohibiting Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any Defendant, including any successor thereof, from engaging, directly or indirectly:

(i) in conduct in violation of Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C); and

(ii) in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (2006) (“commodity interest”), including but not limited to, the following:

(aa) trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006));

(bb) entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1)) (“commodity options”), and/or foreign currency (as described in Section 2(c)(2)(C)(i) of the Act as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008), § 13101, 122 Stat. 1651 (enacted June 18, 2008)) (“forex contracts”) for their own personal account or for any account in which they have a direct or indirect interest;

(cc) having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;

(dd) 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 futures, options on commodity futures, commodity options, and/or forex contracts;

(ee) soliciting, receiving, or accepting any funds from any person for purposes of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;

(ff) applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009); and

(gg) acting as a principal (as that term is defined in Regulation 3.1(a)), agent, or any other officer or employee of any person registered, exempted from registration or required to be registered with the CFTC, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009).

c) An order directing Defendants, as well as any successors and/or agents to any Defendant, 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, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

d) An order directing Defendants to make full restitution to every person or entity whose funds Defendants received or caused another person or entity to receive as a result of acts and practices that constituted violations of the Act, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

e) Enter an order directing Defendants 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 them and any of the customers whose funds were received by them as a result of the acts and practices which constituted violations of the Act, as described herein;

f) An order directing each Defendant to pay a civil monetary penalty under the Act, to be assessed by the Court, in amounts of not more than the higher of (1) triple the monetary gain to Defendant for each violation of the Act or (2) \$130,000 for each violation of the Act occurring from October 23, 2004 through October 22, 2008, and \$140,000 for each violation of the Act occurring on or after October 23, 2008;

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

h) An order requiring Relief Defendants to disgorge funds received by them which they have no legitimate entitlement to or interest in; and

i) Such other and further relief as the Court deems proper.

Respectfully submitted,



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Dated this 6 th day of April 2010.