UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

U.S. COMMODITY FUTURES TRADING COMMISSION, Plaintiff, v. ENRIQUE F. VILLALBA, JR.; and MONEY MARKET ALTERNATIVE, LP, Defendants.	CASE NO. _____

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

Plaintiff U.S. Commodity Futures Trading Commission (CFTC) alleges as follows:

I. SUMMARY

1. Beginning in at least 1996 and continuing through at least November 2009, defendant Enrique F. Villalba (Villalba) engaged in a fraudulent scheme in which he solicited funds from members of the public and traded commodity futures contracts (futures), predominantly related to the S&P 500, on their behalf. Upon information and belief, more than thirty-five investors were bilked out of, in total, at least $37.5 million as a result of the fraudulent scheme orchestrated by Villalba and, beginning in 1998, by Villalba and defendant Money Market Alternative, LP (collectively, Defendants).

2. Villalba opened a futures trading account under the name Money Market Alternative, LP with Futures Commission Merchant (FCM) Rosenthal Collins Group (RCG) in

1998. Defendants deposited more than $23.2 million in this futures account, experiencing net losses of more than $17 million.

3. Despite massive trading losses in this RCG account, Defendants sent monthly, quarterly, and annual statements to investors that showed purported, consistent profits in their accounts with Defendants. Defendants also made numerous oral statements to investors and prospective investors about the nature and purported successful performance of Defendants' futures trading. Most, if not all, of these written and oral statements were false.

4. Further, from at least 2000 through 2008, Defendants created and provided at least one investor with sporadic monthly RCG statements for several different purported accounts. These RCG statements were complete fabrications.

5. Defendants misappropriated more than $10 million in investor funds. Defendants used, at a minimum, approximately $3 million in investor funds to, *inter alia*, finance Villalba's coffee business and purchase real estate for themselves. In addition, Defendants used more than $7 million in investor funds to make Ponzi payments to investors.

6. By misappropriating investor funds, making false written and oral statements to investors regarding trading activity and performance, and providing fictitious FCM statements to at least one investor, Defendants violated Section 4b(a)(2)(i)-(iii) of the Commodity Exchange Act (Act), 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), for conduct that occurred prior to June 18, 2008, and Section 4b(a)(1)(A)-(C) 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 (CRA)), § 13102, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), for conduct that occurred on or after June 18, 2008.

7. Villalba committed the acts and omissions described herein within the course and scope of his employment at or agency with Money Market Alternative, LP; therefore, Money Market Alternative, LP is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and CFTC Regulation (Regulation) 1.2, 17 C.F.R § 1.2 (2009), as principal for its agent's actions and omissions constituting violations of the Act and the Act, as amended by the CRA.

8. Villalba is liable under Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), as a controlling person of Money Market Alternative, LP, for its violations of the Act and the Act, as amended by the CRA, because he did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations committed by Money Market Alternative, LP.

9. Accordingly, the CFTC brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), to enjoin Defendants' unlawful acts and practices and to compel compliance with the Act, as amended by the CRA. In addition, the CFTC seeks rescission, restitution, disgorgement, civil monetary penalties, and such other equitable relief as this Court may deem necessary or appropriate.

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

II. JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), which provides that whenever it shall appear to the CFTC that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act; the Act, as amended by the CRA; or the Regulations, the CFTC may bring an action in the proper district court of the United States against such person to

enjoin such practice, or to enforce compliance with the Act; the Act, as amended by the CRA; and the Regulations.

12. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because at least some of the acts and practices in violation of the Act and the Act, as amended by the CRA, have occurred within this District.

III. THE PARTIES

13. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, 7 U.S.C. §§ 1 *et seq*. (2006); the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 1 *et seq*.; and the Regulations, promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq*. (2009).

14. Defendant **Enrique F. Villalba, Jr.** resides in Cuyahoga Falls, Ohio. He received a bachelor of science from the U.S. Military Academy at West Point and a juris doctorate from Seattle University School of Law. Villalba is a self-described investment manager. He has never been registered with the CFTC in any capacity.

15. Defendant **Money Market Alternative, LP** is an Ohio Limited Partnership formed on February 23, 1998 and controlled by Villalba since its formation. It held a futures trading account in its name that traded investor funds. Money Market Alternative, LP has never been registered with the CFTC in any capacity.

IV. FACTUAL BACKGROUND

16. Beginning in at least 1996, Villalba started soliciting funds from investors and prospective investors and touting his futures trading strategy, which he referred to as the "Money Market Plus Method." Beginning in 1998, Villalba engaged in these solicitations not only for himself, but also for and on behalf of Money Market Alternative, LP. Defendants represented to

investors and prospective investors that this trading strategy capitalized on certain times each month when 401(k) plans and pension funds entered the S&P 500 futures market. At those precise moments, according to Defendants, they would buy or sell S&P 500 futures contracts, for and on behalf of investors, to take advantage of slight up or down ticks in the price of those contracts. In accordance with Defendants' trading strategy, no other types of futures contracts were to be traded. During the time investors' funds were not invested in S&P 500 futures contracts, Defendants represented that their funds would sit safely in a money market account. To further minimize risk, Defendants also told investors that any S&P 500 futures positions that Defendants entered on the investors' behalf would include "protective sell stops."

17. Defendants represented to investors and prospective investors that their "Money Market Plus Method" of investing was conservative and low-risk. Defendants further told investors that their funds would be held in individual investor accounts and not commingled with other investors' funds. Defendants also told at least one investor that, in case something should ever happen to Villalba, a friend and fellow West Point graduate had all the information necessary to allow that individual to wind up the investments and distribute funds to investors. All these representations to investors were false.

18. Defendants represented that investor money would be held at RCG, and, in fact, Defendants opened a trading account under the name of Money Market Alternative, LP at RCG in June 1998. In account opening documents for this account, however, Defendants falsely stated that no other person had more than a ten percent financial interest in the account. Defendants never opened separate accounts for individual investors.

19. Upon information and belief, Defendants received more than $37.5 million from investors over the life of their fraudulent scheme.

20. Defendants appear to have received the bulk of these investor funds between 2005 and 2009. In fact, on January 1, 2005, the Money Market Alternatives, LP account at RCG had a balance of $560,004, and between January 1, 2005 and April 2009 (when RCG deactivated the account), Defendants deposited $22,740,009 in investor funds into the account. During this same time frame, the account experienced futures trading losses (almost exclusively on S&P 500 and E-mini S&P 500 contracts) of more than $16.8 million (inclusive of trading fees and commissions), with Defendants withdrawing $6,517,869 from the account before it was deactivated.

21. Despite these considerable losses, Defendants sent investors monthly, quarterly, and annual statements representing that their accounts were profitable. For example, Defendants sent at least one investor a quarterly statement showing a purported 14.2 percent gain and another investor an annual statement showing a purported 35.2 percent gain. Not only were the profit representations in Defendants' statements false, the trading activity did not occur as set forth in those statements. Moreover, Defendants orally misrepresented to investors that their accounts were profitable and that certain trades had occurred. By virtue of these and other written and oral misrepresentations, Defendants enticed prospective investors to provide money for Defendants' scheme and existing investors to provide additional money for or maintain their money in their accounts with Defendants.

22. Defendants also sent periodic emails to their investors and prospective investors that discussed their views of the market and what positions they had taken or planned to take. At least some of these emails represented that specific trades or profits had occurred when, in fact, they had not occurred.

23. Defendants also failed to tell at least some investors that, contrary to the "Money Market Plus Method," Defendants were trading gold futures and NASDAQ futures with investors' funds. Written statements sent to at least some investors omitted references to this gold and NASDAQ futures trading as well.

24. In addition to the periodic statements and emails, between February 2000 and May 2008, Defendants created and provided to at least one investor sporadic statements purportedly from RCG. These purported RCG statements represented that the investor had various individual accounts at RCG, with different account numbers, and that despite some occasional small losses, his $3.3 million had grown to more than $16 million by 2009. In September 2009, this investor called RCG and learned that RCG did not have any accounts corresponding to the account numbers Defendants had provided the investor or any other accounts associated with the investor. The purported RCG statements Defendants sent this investor were complete fiction.

25. In May 2009, Villalba opened another futures trading account in the name of Rico Latte III, LLC at another FCM. Villalba deposited more than $750,000 in this account, lost approximately $382,000 trading futures through November 2009, and withdrew the remainder of the funds.

26. Through their fraudulent scheme, Defendants misappropriated more than $10 million in investor funds. They used, at a minimum, approximately $3 million in investor funds to, *inter alia*, finance Villalba's "Rico Latte" coffee business and purchase real estate for themselves. In addition, Defendants used more than $7 million in investor funds to make Ponzi payments to investors.

27. Villalba controlled Money Market Alternative, LP. He established all bank and trading accounts used by Money Market Alternative, LP and then directed all activity in those accounts, including the transfer of investor funds into and out of those accounts.

28. In the course of Defendants' fraudulent scheme, Defendants used the following entities to receive investor funds, disburse investor funds, communicate with investors, or otherwise perpetrate or further the scheme: Money Market Alternatives, Inc.; Hybrid Money Market Management, Ltd.; Rico Latte, Inc.; Rico Latte II, LLC; Rico Latte III, LLC; Villalba Management, LLC; Trans Capital Management, Inc., and TCM Financial Services, Inc.

V. VIOLATIONS OF SECTION 4b(a) OF THE ACT

VIOLATIONS OF SECTION 4b(a)(2)(i)-(iii) OF THE ACT (FOR CONDUCT PRIOR TO JUNE 18, 2008) AND SECTION 4b(a)(1)(A)-(C) OF THE ACT, AS AMENDED BY THE CRA (FOR CONDUCT ON OR AFTER JUNE 18, 2008): FRAUD IN CONNECTION WITH FUTURES

29. The allegations set forth in paragraphs 1 through 28 are re-alleged and incorporated by reference.

30. With respect to conduct occurring prior to June 18, 2008, Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), made it unlawful

> for any person to cheat or defraud or attempt to cheat or defraud; willfully to make or cause to be made any false report or statement; or willfully deceive or attempt to deceive by any means whatsoever other persons in or in connection with orders to make, or the making of, contracts of sale of commodities, for future delivery, made, or to be made, for or on behalf of such other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped or received in interstate commerce for the fulfillment thereof.

31. With respect to conduct occurring on or after June 18, 2008, Section 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), makes 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; (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.

32. Beginning in at least 1996 and continuing through at least November 2009, Defendants, in connection with futures trading and purported futures trading: (1) misappropriated funds provided by investors ; (2) solicited investments through fraudulent, material misrepresentations and omissions, including, among other things, material misrepresentations and omissions about Defendants' trading and purported trading on behalf of investors and prospective investors and the profits Defendants purportedly would and did earn trading on behalf of investors and prospective investors; (3) made or caused to be made false reports or statements, both written and oral, to investors and prospective investors; and (4) made or caused to be made fabricated, written FCM statements to at least one investor, all in violation of Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and in violation of Section 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008.

33. Defendants engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

34. The foregoing acts, misrepresentations, omissions, and failures of Villalba occurred within the scope of his employment or agency with Money Market Alternative, LP; therefore, Money Market Alternative, LP is liable for these acts, omissions, and failures 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).

35. Villalba controls (and during the relevant period controlled) Money Market Alternative, LP, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Money Market Alternative, LP's conduct alleged in this Complaint. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), therefore, Villalba is liable for Money Market Alternative, LP's violations of Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), and Section 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C).

36. Each material misrepresentation or omission, false report or statement, or misappropriation including, but not limited, to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and Section 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008.

VI. RELIEF REQUESTED

WHEREFORE, the CFTC respectfully requests that this 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 Section 4b(a)(2)(i)-(iii), 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), for conduct prior to June 18, 2008, and Section 4b(a)(1)(A)-(C) of the

Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), for conduct on or after June 18, 2008.

B. An order of permanent injunction prohibiting Defendants, and any other person or entity associated with them, from engaging in conduct violative of the Section 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C).

C. 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 Defendants, including any successor thereof, from, directly or indirectly,

1. 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));

2. Entering into any transactions involving futures, options, 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)(B) and 2(c)(2)(C)(i) of the Act, as amended by the by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(B) and 2(c)(2)(C)(i)) (forex contracts) for their own personal account or for any account in which they have a direct or indirect interest;

3. Having any futures, options, commodity options, and/or forex contracts traded on their behalf;

4. 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 futures, options, commodity options, and/or forex contracts;

5. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any futures, options, commodity options, and/or forex contracts;

6. 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

7. 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).

D. An order requiring Defendants, as well as any successors to Defendants, to disgorge to any officer appointed or directed by the Court all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices that constitute violations of the Act or the Act, as amended by the CRA, as described herein, including pre-judgment interest;

E. 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 investors whose funds were received by them as a result of the acts and practices which constituted violations of the Act or the Act, as amended by the CRA, as described herein;

F. An order requiring Defendants to make full restitution to every person or entity whose funds Defendants received or caused another person or entity to receive, from the acts or practices that constitute violations of the Act or the Act, as amended by the CRA, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

G. An order requiring Defendants to pay civil monetary penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of: (1) triple the monetary gain to Defendants for each violation of the Act and the Act, as amended by the CRA; or (2) a penalty of $110,000 for each violation committed on or before October 22, 2000; $120,000 for each violation committed between October 23, 2000 and October 22, 2004; $130,000 for each violation committed between October 23, 2004 and October 22, 2008; and $140,000 for each violation committed on or after October 23, 2008;

H. An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

I. An order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Respectfully submitted by,

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