

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: _____

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RICARDO H. GOLDMAN,

Defendant.

_____ /

COMPLAINT

Plaintiff Securities and Exchange Commission alleges:

I. INTRODUCTION

1. The Commission brings this action against Ricardo H. Goldman for violating the anti-fraud and broker-dealer registration provisions of the federal securities laws as well as a prior Commission order.

2. Goldman repeated his prior scheme of operating a fraudulent day trading operation. Goldman misled day traders (“traders”) into thinking they were opening individual online securities trading accounts with Goldman’s unregistered and now defunct broker-dealer, America Capital Group LLC (“ACG U.S.”). Instead, between at least November 2010 and August 2015, Goldman raised approximately \$6.9 million from at least 77 traders and ultimately commingled traders’ funds in one U.S. brokerage account belonging to America Capital Group LTD (“ACG Belize”). Goldman concealed the fact that he commingled traders’ funds by creating and giving them online access to individual sub-accounts under ACG Belize’s pooled master account. ACG Belize’s master trading account ultimately sustained at least \$3.6 million in trading losses which traders shared, in part, due to the commingling of their funds. Further

Goldman made material misrepresentations and omissions to traders regarding his background and disciplinary history which includes permanent antifraud and securities and broker-dealer registration injunctions, a broker-dealer bar and a state court conviction for grand theft and forgery. Goldman profited from this scheme by charging traders a commission.

3. By engaging in this conduct Goldman violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5, Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a), and Section 15(b)(6)(B) of the Exchange Act, 15 U.S.C. § 78o(b)(6)(B).

4. Unless enjoined, Goldman is reasonably likely to continue to engage in future violations of the federal securities laws.

II. DEFENDANT & RELATED ENTITIES

5. Goldman is a resident of Miami, Florida. Goldman controlled ACG U.S., and the ACG Belize brokerage account, and was the managing member of American Academy Wall Street L.L.C. (“American Academy”) which provided investment seminars and day trading courses. Goldman has never been registered with the Commission or held any securities licenses.

6. In 1994, Goldman pled guilty to felony grand theft and forgery for misappropriating approximately \$200,000 in money from tax deed sales that should have gone to former property owners. State v. Goldman, Case No. F92-011569 (Fla. 11th Cir. Ct. 1992). He was sentenced to five years imprisonment and five years probation.

7. In 2008, the Commission charged Goldman with fraudulently operating an unregistered day trading firm. Goldman consented to permanent antifraud and securities and broker-dealer registration injunctions, a broker-dealer bar, and was ordered to pay disgorgement of \$260,360, prejudgment interest of \$104,849, and a civil penalty of \$130,000. SEC v.

Goldman, Case No. 08-civ-22666 (S.D. Fla. filed Sept. 25, 2008); In the Matter of Ricardo H. Goldman Exchange Act Release No. 58976 (November 19, 2008). Goldman never paid the amounts ordered.

8. **ACG U.S.** is an inactive Florida limited liability company formed in February 2006 and was located in Miami Beach, Florida. During the relevant time, Goldman controlled ACG U.S. and used its bank account to pool the majority of traders' investments before transferring those funds to ACG Belize's brokerage account held at Letsgotrade, Inc. d/b/a ChoiceTrade ("ChoiceTrade"), a registered broker-dealer based in San Juan, Puerto Rico. ACG U.S. has never been registered with the Commission in any capacity.

9. **ACG Belize** is a dissolved Belize corporation formed in February 2006, which had its principal place of business in Uruguay. Goldman sent trader funds to ACG Belize's brokerage account held at ChoiceTrade. Pursuant to the opening documents provided to ChoiceTrade, Goldman's uncle was the sole shareholder, officer, director, and beneficial owner of ACG Belize. However, Goldman, using his uncle as his nominee, was the only person with access to and control of ACG Belize's brokerage account. ACG Belize has never been registered with the Commission in any capacity.

10. **Americ Capital Group LLC** ("Americ Capital") is an inactive Florida limited liability company formed in July 2009. During the relevant time, Goldman's wife or her business associates served as managers of Americ Capital. Americ Capital received trader funds that were thereafter transferred to ACG Belize's brokerage account at ChoiceTrade. Americ Capital has never been registered with the Commission in any capacity.

III. JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act, 15 U.S. C. §§77t(b), 77t(d), and 77v(a); and Sections 21(d), 21(e) and 27 of the Exchange Act, 15 U.S.C. §§78u(d), 78(u)(e) and 78aa.

12. This Court has personal jurisdiction over Goldman and venue is proper in the Southern District of Florida because Goldman resides and transacted business in this district and many of the acts and transactions constituting violations of the Exchange Act alleged in this Complaint occurred in this District. In addition, venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to the Commission's claims occurred here.

13. In connection with the conduct alleged in this Complaint, Goldman, directly and indirectly, singly or in concert with others, made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation and communication in interstate commerce, and of the mails.

IV. FACTS

A. Prior Commission Action Against Goldman

14. In September 2008, the Commission filed a civil injunctive action against Goldman alleging that he fraudulently operated an unregistered day trading brokerage firm through his company E Trade Fund LLC ("E Trade Fund").

15. Specifically, the Commission's complaint alleged, among other things, that: (1) from approximately May 2004 through at least February 2006, Goldman solicited at least 110 traders to invest approximately \$2.1 million into the day trading operation he ran through E Trade Fund so they could day trade securities; (2) Goldman misled traders into believing that

their trading accounts were secured by the Securities Investor Protection Corporation (SIPC); (3) Goldman touted his professional experience and reputation on E Trade Fund's website, yet failed to disclose his 1994 conviction. E Trade Fund's traders ultimately lost approximately \$1 million due to group trading losses. In October 2008, Goldman settled the action as outlined above.

B. Goldman Resumes Activities

16. Beginning around November 2010, Goldman resumed providing day trading services to the investing public. Goldman provided investment seminars and taught day trading courses through his company American Academy in his Florida office and in Venezuela. At his seminars and courses, Goldman covered various topics, including, but not limited to, day trading, the stock market, and margin. Goldman also provided course attendees with materials on the topics he discussed. Once the course was over, Goldman directed interested traders to a website, www.americacap.com, where they could fill out the paperwork necessary to open and fund a day trading account. The traders' day trading investments were collected in ACG U.S. and Americ Capital's bank accounts ("the relevant bank accounts") and thereafter transferred to a master trading account belonging to ACG Belize located at ChoiceTrade.

17. Goldman submitted new account paperwork to ChoiceTrade which listed Goldman's uncle as the beneficial owner of ACG Belize, however, Goldman was the only person with access to and control of ACG Belize's master trading account.

18. Goldman allowed traders to day trade securities in ACG Belize's master trading account. Goldman utilized online software databases to establish and administer sub-accounts for the traders giving the appearance that each had an individual account. Further, Goldman provided ChoiceTrade with limited trading authorizations completed by some traders which authorized them to trade in ACG Belize's master trading account. In two letters purportedly signed by the uncle that Goldman provided to ChoiceTrade, he misled ChoiceTrade into

believing all funds in ACG Belize's master trading account belonged to ACG Belize and not to the authorized traders themselves. Through ACG Belize's master and sub-accounts, Goldman allowed traders to trade against the equity of ACG Belize's pooled master trading account. Goldman also routinely directed ChoiceTrade to adjust the buying power associated with the various sub-accounts.

C. Day Trading Program

19. Goldman provided equipment, office space, and remote access for traders to conduct their day trading business which resulted in at least \$2.5 billion in securities trading. The traders were typically charged \$0-\$100 per week for the ability to trade in Goldman's office. For at least one trader, Goldman managed and traded in the trader's sub-account.

20. Between at least November 2010 and August 2015, approximately 77 investors deposited approximately \$6.9 million into the relevant bank accounts. Goldman subsequently transferred these funds from the relevant bank accounts to ACG Belize's ChoiceTrade brokerage account. Ultimately, ACG Belize's ChoiceTrade brokerage account incurred significant trading losses amounting to at least \$3.6 million. Traders shared in these losses, some of which were caused by other traders' losses due to the commingling of traders' funds.

D. Other Use of Trader Funds

21. In addition to sending trader funds to ACG Belize's brokerage account, Goldman also utilized trader funds for personal expenses including, but not limited to, his rent, car and credit card payments. Goldman provided at least two traders with a "Letter of Acknowledgement" ("Acknowledgements"). In these Acknowledgements Goldman stated, among other things, that ACG U.S. received commission rebates that he used to pay his and company expenses. Two traders told the staff they paid approximately \$12 and \$13, respectively per trade. However, ChoiceTrade generally charged ACG Belize's master account \$3.95 in

commissions on each equity trade up to 2,000 tickets per month and \$2.95 for any tickets above 2,000 in any given month. ChoiceTrade did not provide commission rebates to ACG Belize. Therefore, Goldman retained the spread between commissions Goldman charged traders and the commissions ChoiceTrade charged ACG Belize's master trading account.

E. Goldman's Scheme Unravels

22. Mounting losses within the ACG Belize master account eventually caused Goldman's scheme to unravel. When certain traders requested their funds back starting in May 2015, Goldman delayed repayment by falsely stating funds were not available due to an ongoing government inspection of trader accounts. Later, in August 2015, traders were told that operations were being suspended due to a lack of liquidity

23. On October 25, 2015, one of the traders filed a lawsuit against Goldman and ACG U.S. alleging, among other things, civil theft related to ACG U.S.'s day trading activities. Goldman settled the case by entering into a treble damages consent judgment for \$1,590,048.91 plus attorney's fees and costs. In connection with the settlement Goldman provided one of the Acknowledgements where he admitted, among other things, that he: (1) controlled ACG U.S.; (2) established ACG U.S. to pool his day trading students' investments into a common brokerage account; (3) was the only person who had access to and controlled ACG U.S.'s brokerage account; (4) established sub-accounts in the brokerage account for each trader; (5) was responsible for the losses that the traders incurred; (6) did not inform traders that their funds were pooled with other traders and that they might incur losses from the trading activity of other traders; and (7) did not inform the traders that there was a prior consent judgment against him.

F. Material Misrepresentations and Omissions

1. Material Misrepresentations and Omissions Regarding Goldman's Background

24. Goldman made material misrepresentations and omissions to traders concerning his background. During his day trading seminars, Goldman referred to himself as a "Professional Trader" and stated "THE DIFFERENCE BETWEEN SUCCESS AND FAILURE IS EDUCATION" which he was providing. Following the training seminars, Goldman solicited traders to day trade through him. Goldman discussed with at least one trader his prior business activities in real estate and his subsequent move to day trading where he claimed to have been successful. Contrary to his claim of success, Goldman knew he had been enjoined in conjunction with his prior day trading activities where traders lost funds due to his commingling of their funds and their group trading losses. Further, Goldman failed to tell traders the negative aspects of his prior business activities such as his consent judgment, broker-dealer bar and prior criminal conviction. As discussed above, Goldman admitted in the Acknowledgements that he did not tell traders about the Commission's prior consent judgment. In addition, at least 5 traders told the staff that neither Goldman nor anyone else associated with ACG U.S. told them that Goldman was subject to a broker-dealer bar.

2. Misrepresentations and Omissions Regarding the Trading Program

25. Goldman made material misrepresentations and omissions regarding the trading program. In investment seminar materials Goldman used to solicit traders, under the heading "BENEFITS OF DAYTRADING" Goldman told potential traders, "[y]ou don't depend on others...[t]he success of this business is determined solely by you and the skills you develop...100% of the profits are yours... as are the losses." In trading course materials, Goldman further promised traders that "...a blueprint for maximizing your earnings and reducing

the risk of loss will be given in the course [and] this blueprint will allow you to develop your own styles of trading based on your instincts, while limiting your losses.”

26. Goldman also provided traders with the instructions on how to open and fund their trading accounts. Goldman failed to tell traders that their investment funds would be pooled in the ChoiceTrade brokerage account belonging to ACG Belize and that the losses of other traders may impact their investments. ACG Belize’s master trading account ultimately suffered at least \$3.6 million in trading losses which were borne by traders. Also, while Goldman charged traders a commission to trade, he did not disclose to traders that he had a broker-dealer bar that prevented him from acting as a broker-dealer and charging commissions for securities transactions.

V. **CLAIMS FOR RELIEF**

Count I
Violations of Section 10(b) and Rule 10b-5(a) of the Exchange Act

27. The Commission repeats and realleges paragraphs 1 through 26 of this Complaint.

28. From November 2010 through August 2015, Goldman, directly and indirectly, by use of any means and instrumentality of interstate commerce, or of the mails, in connection with the purchase or sale of securities, knowingly or recklessly employed devices, schemes or artifices to defraud.

29. By reason of the foregoing, Goldman violated and, unless enjoined, is reasonably likely to continue to violate Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(a), 17 C.F.R. § 240.10b-5(a).

Count II
Violations of Section 10(b) and Rule 10b-5(b) of the Exchange Act

30. The Commission repeats and realleges paragraphs 1 through 26 of this Complaint.

31. From November 2010 through August 2015, Goldman, directly and indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, knowingly or recklessly made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in connection with the purchase or sale of any security.

32. By reason of the foregoing, Goldman violated and, unless enjoined, is reasonably likely to continue to violate Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(b), 17 C.F.R. § 240.10b-5(b).

Count III
Violations of Section 10(b) and Rule 10b-5(c) of the Exchange Act

33. The Commission repeats and realleges paragraphs 1 through 26 of this Complaint.

34. From November 2010 through August 2015, Goldman, directly and indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, in connection with the purchase or sale of any security, knowingly or recklessly engaged in acts, practices, and courses of business which operated or would have operated as a fraud or deceit upon any person.

35. By reason of the foregoing, Goldman violated and, unless enjoined, is reasonably likely to continue to violate Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(c), 17 C.F.R. § 240.10b-5(c).

Count IV
Violations of Section 15(a) of the Exchange Act

36. The Commission repeats and realleges paragraphs 1 through 26 of this Complaint.

37. From no later than November 2010 through August 2015, Goldman made use of the mails or any means or instrumentality of interstate commerce to effect transactions in securities, or to induce or attempt to induce the purchase or sale of securities, without being

associated with a broker or dealer that was registered with the Commission in accordance with Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b).

38. By reason of the foregoing, Goldman violated and, unless enjoined, is reasonably likely to continue to violate, Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a).

Count V
Violations of 15(b)(6)(B) of the Exchange Act

39. The Commission repeats and realleges paragraphs 1 through 26 of this Complaint.

40. From November 2010 through August 2015, Goldman associated with a broker or dealer in contravention of a prior court order prohibiting such association.

41. By reason of the foregoing, Goldman violated Section 15(b)(6)(B) of the Exchange Act, 15 U.S.C. § 78o(b)(6)(B), by, without the consent of the Commission, willfully becoming or associating with a broker or dealer in contravention of a Commission order that bars Goldman from acting as or associating with a broker or dealer.

42. By reason of the foregoing, Goldman violated and, unless enjoined, is reasonably likely to continue to violate, Section 15(b)(6)(B) of the Exchange Act, 15 U.S.C. § 78o(b)(6)(B).

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court find the Defendant committed the violations alleged, and:

A. Permanent Injunctive Relief

Issue a permanent injunction restraining and enjoining Goldman, his officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating the federal securities laws alleged in this Complaint.

B. Conduct-Based Injunctive Relief

Issue a conduct-based injunction prohibiting Goldman from directly or indirectly, including, but not limited to, through any entity owned or controlled by him: (i) participating in the issuance, purchase, offer, or sale of any security, or (ii) engaging in activities for purposes of inducing or attempting to induce the purchase or sale of any security; provided, however, that such injunction shall not prevent Goldman from purchasing or selling securities listed on a national securities exchange for his own personal account.

C. Order

Issue an Order directing Goldman to comply with the Commission's Order dated November 19, 2008, In the Matter of Ricardo H. Goldman (Exchange Rel. No. 58976, Admin. Proc. 3-13293).

D. Disgorgement and Prejudgment Interest

Issue an Order directing Goldman to disgorge all ill-gotten gains or proceeds received as a result of the acts and courses of conduct complained of herein, with prejudgment interest thereon.

E. Civil Penalty

Issue an Order directing Goldman to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. §77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

F. Further Relief

Grant such other and further relief as may be necessary and appropriate.

VII. RETENTION OF JURISDICTION

The Commission respectfully requests that the Court retain jurisdiction over this action and over Goldman in order to implement and carry out the terms of all orders and decrees that it

may enter, or to entertain any suitable petition or motion by the Commission for additional relief within the jurisdiction of this Court.

Dated: November 7, 2018

Respectfully submitted,

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