

FILED

JUL 18 2014

NATIONAL FUTURES ASSOCIATION  
BEFORE THE  
BUSINESS CONDUCT COMMITTEE

NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING

In the Matter of:	)	
	)	
FOREX CAPITAL MARKETS LLC	)	NFA Case No. 14-BCC-015
(NFA ID #308179),	)	
	)	
Respondent.	)	

**COMPLAINT**

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association (NFA), and having found reason to believe that NFA Requirements are being, have been or are about to be violated and that the matter should be adjudicated, NFA's Business Conduct Committee issues this Complaint against Forex Capital Markets LLC (FXCM).

**ALLEGATIONS**

**JURISDICTION**

1. At all times relevant to this Complaint, FXCM was a Forex Dealer Member (FDM), futures commission merchant (FCM), and Retail Foreign Exchange Dealer (RFED) Member of NFA located in New York City.

**BACKGROUND**

2. FXCM has been an NFA Member since 2001. The firm's principal business is acting as the counterparty to customer accounts trading in off-exchange foreign currency transactions.
3. In August 2013, NFA conducted an examination of FXCM. The examination found that FXCM did business with a firm which was required to be registered –

but was not registered – as a commodity pool operator (CPO); and failed to submit certain forex trade data to NFA through NFA's Forex Transaction Reporting Execution Surveillance System (FORTRESS). These deficiencies are alleged in detail below.

#### **APPLICABLE RULES**

4. NFA Compliance Rule 2-36(d) provides that no Member may carry a forex account for, accept a forex order or account from, handle a forex transaction for or on behalf of, receive compensation (directly or indirectly) for forex transactions from, or pay compensation (directly or indirectly) for forex transactions to any non-Member of NFA, or suspended Member, that is required to be registered with the Commodity Futures Trading Commission (CFTC) as an FCM, RFED, IB, CPO, or CTA in connection with its forex activities and that is acting in respect to the account, order, or transaction for a forex customer, a forex pool or participant therein, a forex client of a commodity trading advisor, or any other person unless:
  - (1) the non-Member is a member of another futures association registered under Section 17 of the Act or is exempted from this prohibition by Board resolution; or
  - (2) the suspended Member is exempted from this prohibition by the Appeals Committee.
5. NFA Compliance Rule 2-48 requires, in pertinent part, each FDM to file a daily electronic report of trade data with NFA through FORTRESS. The report must contain the data and be in the format prescribed by NFA, which includes any market events, system outages, and adjustments that were issued to a customer for individual trades.

## COUNT I

### **VIOLATION OF NFA COMPLIANCE RULE 2-36(d): DOING BUSINESS WITH AN UNREGISTERED ENTITY WHICH WAS REQUIRED TO BE REGISTERED AS A CPO NFA MEMBER.**

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6. The allegations contained in paragraphs 1 through 4 are realleged as paragraph 6.
7. As part of NFA's August 2013 exam of FXCM, NFA reviewed a sample of FXCM's customer accounts. Among the accounts that NFA reviewed was a commodity pool account of Revelation Forex Fund LP (Revelation Forex Fund).
8. Revelation Forex Fund first opened an account at FXCM in July 2011. The account documentation listed RFF GP LLC (RFF) as the general partner of Revelation Forex Fund. BASIC revealed that RFF was never registered as a CPO, or in any other capacity, but revealed that RFF had filed an exemption notice for the Revelation Forex Fund under CFTC Regulation 4.13(a)(3).
9. FXCM initially declined to open an account for Revelation Forex Fund after determining that RFF was not registered as a CPO. FXCM instructed Kevin G. White – the owner of Revelation Forex Fund's general partner (RFF) – to contact NFA concerning RFF's registration requirements. Subsequently, RFF filed the 4.13(a)(3) exemption notice with NFA. RFF advised FXCM that it had filed the exemption notice, whereupon, FXCM opened an account for Revelation Forex Fund.
10. The 4.13(a)(3) exemption – the so-called *de minimis* exemption – is available for a commodity pool that trades only a *de minimis* amount of commodity interests (e.g., futures, forex, and swaps) and offers and sells interests in the pool without marketing them to the public.

11. However, Revelation Forex Fund did not qualify for a 4.13(a)(3) *de minimis* exemption.
12. After Revelation Forex Fund opened its first account at FXCM in July 2011, it opened eleven additional accounts at FXCM, nine of which conducted forex trading.
13. FXCM should have questioned whether the Revelation Forex Fund qualified for the *de minimis* exemption. Had FXCM done this, it would have been apparent to FXCM that the Revelation Forex Fund did not meet the *de minimis* requirement of 4.13(a)(3) as it exclusively traded forex – and not in a *de minimis* amount -- and was marketed to the public.
14. It is apparent that FXCM did not take adequate steps to determine if the Revelation Forex Fund qualified for the *de minimis* exemption, or if the Fund's general partner, RFF, was properly registered and, as a consequence, FXCM commenced to do business with an unregistered entity – RFF – which should have been registered as a CPO NFA Member.
15. By reason of the foregoing acts and omissions, FXCM is charged with violations of NFA Compliance Rule 2-36(d).

## COUNT II

### **VIOLATION OF NFA COMPLIANCE RULE 2-48: FAILING TO SUBMIT TRADE DATA TO NFA THROUGH FORTRESS.**

16. The allegations contained in paragraphs 1 through 3 and 5 are realleged as paragraph 16.
17. From mid-January to mid-August 2013, FXCM failed to submit to FORTRESS trade execution data from, at least, two of its trading servers. This data

comprised millions of orders and executions. In addition, in January and again in April of this year, FXCM failed to report adjustments to FORTRESS within 24 hours of making the adjustments to customers' accounts, as required by NFA Compliance Rule 2-48.

18. By reason of the foregoing acts and omissions, FXCM is charged with violations of NFA Compliance Rule 2-48.

### **PROCEDURAL REQUIREMENTS**

#### **ANSWER**

You must file a written Answer to the Complaint with NFA within 30 days of the date of the Complaint. The Answer shall respond to each allegation in the Complaint by admitting, denying or averring that you lack sufficient knowledge or information to admit or deny the allegation. An averment of insufficient knowledge or information may only be made after a diligent effort has been made to ascertain the relevant facts and shall be deemed to be a denial of the pertinent allegation.

The place for filing an Answer shall be:

National Futures Association  
300 South Riverside Plaza, Suite 1800  
Chicago, Illinois 60606  
Attn: Legal Department-Docketing  
E-Mail: [Docketing@nfa.futures.org](mailto:Docketing@nfa.futures.org)  
Facsimile: 312-781-1672

Failure to file an Answer as provided above shall be deemed an admission of the facts and legal conclusions contained in the Complaint. Failure to respond to any allegation shall be deemed an admission of that allegation. Failure to file an Answer as provided above shall be deemed a waiver of hearing.

**POTENTIAL PENALTIES, DISQUALIFICATION AND INELIGIBILITY**

At the conclusion of the proceedings conducted in connection with the issuance of this Complaint, NFA may impose one or more of the following penalties:

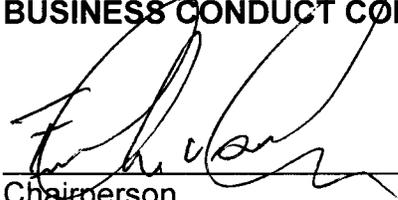
- (a) expulsion or suspension for a specified period from NFA membership;
- (b) bar or suspension for a specified period from association with an NFA Member;
- (c) censure or reprimand;
- (d) a monetary fine not to exceed \$250,000 for each violation found; and
- (e) order to cease and desist or any other fitting penalty or remedial action not inconsistent with these penalties.

The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act. Respondents in this matter who apply for registration in any new capacity, including as an associated person with a new sponsor, may be denied registration based on the pendency of this proceeding.

Pursuant to CFTC Regulation 1.63 penalties imposed in connection with this Complaint may temporarily or permanently render Respondents who are individuals ineligible to serve on disciplinary committees, arbitration panels and governing boards of a self-regulatory organization, as that term is defined in CFTC Regulation 1.63.

**NATIONAL FUTURES ASSOCIATION  
BUSINESS CONDUCT COMMITTEE**

Dated: 7-18-14

By:   
Chairperson