

FILED

**NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING**

NFA Case No. 06-BCC-046

1. At all times relevant to this Complaint, FXCM was a futures commission merchant ("FCM") Forex Dealer Member ("FDM") of NFA located in New York, New York.
2. At all times relevant to this Complaint, Niv was the chief executive officer ("CEO") and a registered associated person ("AP") of FXCM and an NFA Associate.

BACKGROUND

3. FXCM has been registered as an FCM and NFA Member since June 2001. Its principal business is the handling of customer accounts trading in off-exchange foreign currency futures and foreign currency options transactions ("forex").
4. In November 2005, NFA's Business Conduct Committee ("BCC") issued a Complaint against FXCM, alleging violations of NFA Compliance Rule 2-36(b)(1) based on deficient promotional material used by the firm and its unregistered solicitors. The Complaint cited FXCM and its solicitors for making numerous misleading claims in its advertising including claims of commission free trading; claims of "no slippage" and "guaranteed stop/limit orders;" and claims that customers' funds were segregated in FDIC insured accounts and, thus, accorded special protection. FXCM settled the 2005 BCC Complaint by agreeing to pay a \$110,000 fine.
5. NFA commenced another audit of FXCM in January 2006. As alleged herein, NFA's audit found that, even after settling the 2005 BCC case and assuring NFA that it would take all necessary measures to comply with NFA's promotional material requirements, FXCM continued to make the same misleading claims in its promotional material that it was cited for in the prior BCC case. NFA's 2006 audit also found deficiencies in FXCM's anti-money laundering ("AML") program as evidenced by the large number of accounts FXCM opened for Nigerian nationals, without identifying those accounts as high risk for potential money laundering.

APPLICABLE RULES

6. NFA Compliance Rule 2-36(b)(1) provides that no FDM or Associate of an FDM engaging in any foreign currency futures or options transaction shall cheat, defraud or deceive, or attempt to cheat, defraud or deceive any other person.
7. NFA Compliance Rule 2-36(c) provides that FDMs and their Associates shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their foreign currency futures and options business.
8. NFA Compliance Rule 2-36(d) provides that an FDM that is a counterparty to retail customers' forex transactions shall be subject to discipline for the activities of any person that solicits or introduces a customer to the Member, unless such person is an NFA Member or Associate.
9. NFA Compliance Rule 2-9(c) requires, in pertinent part, that all FCM Members develop and implement a written anti-money laundering ("AML") program.
10. NFA Compliance Rule 2-36(e) provides that each FDM shall diligently supervise its employees and agents in the conduct of their foreign currency futures and options activities for or on behalf of the FDM. Each Associate of an FDM who has supervisory duties shall diligently exercise such duties in the conduct of that Associate's foreign currency futures and options activities for or on behalf of the FDM.

COUNT I

VIOLATION OF NFA COMPLIANCE RULES 2-36(b)(1) AND 2-36(c): USING DEFICIENT PROMOTIONAL MATERIAL AND FAILING TO UPHOLD HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE.

11. The allegations contained in paragraphs 1 and 3 through 8, are realleged as paragraph 11.
12. At the time of NFA's 2006 examination, FXCM solicited customers through sixteen different websites which it had created, as well as magazine ads, videos, seminars, direct mail ads, e-mails, banner ads, and other marketing materials.
13. Two of FXCM's websites and a PowerPoint presentation that FXCM used for a trading seminar contained misleading claims similar to those cited in the prior BCC action, including:
 - "The market is always liquid, meaning positions can be liquidated and stop orders executed without slippage."
 - "Whichever website you use - FXCM or FXCM TR - you will be able to experience the same excellent order execution, price certainty and 24-hour support."
 - "...ultimately, the allure of commission free trading, 200:1 leverage, strong trends, and the ability to trade 24 hours a day won him over..."
 - "Benefits of Forex Trading...Leverage up to 200 to 1" and "Benefits of Foreign Exchange Trading...Leverage – up to 100 to 1."
 - "FXCM TR is the single biggest counterparty in the retail FX world and a safer counterparty with which to conduct forex trading."
14. FXCM's claims of slippage free trading and price certainty were misleading, as slippage and price uncertainty can and does occur in volatile markets.

15. FXCM's claims hyping the advantages of leverage were also misleading in that *they failed to include an equally prominent contemporaneous disclosure of the increased risks associated with leverage, as required by the Interpretive Notice to NFA Compliance Rule 2-36 ("Interpretive Notice")*.
16. In addition, FXCM's claims of commission free trading were misleading in that they were unaccompanied by a prominent disclosure of how FXCM is compensated.
17. FXCM's claim that it is a "safer" counterparty was also misleading in that it suggested that forex funds deposited with FXCM are given special protection, which is expressly prohibited by the Interpretive Notice.
18. FXCM's supervisory procedures for its unregistered solicitors states that FXCM's "Compliance Department shall conduct a thorough review of each IB website on a weekly basis...the scope of review includes, but is not limited to, every link, web page, and posted form on the IB website." Under the procedures, solicitors are given one week (three days in the case of a severe deficiency) to correct deficiencies noted by FXCM to avoid termination of their business relationship with FXCM.
19. At the time of NFA's 2006 examination, FXCM had approximately 800 foreign and domestic unregistered sales solicitors, about 200 of which were domestic solicitors who solicited U.S. customers. About half of FXCM's 200 domestic solicitors maintained active websites at the time of NFA's examination. NFA reviewed approximately 35 of these websites and found a number of misleading claims on these websites, as alleged below.

20. One solicitor website that NFA reviewed included the statement, "...ideal for active traders wishing to leverage the advantages of FX trading ...100:1 leverage." Another solicitor website that NFA reviewed included the statement, "our traders enjoy 100:1 leverage when trading FX." These statements were misleading as neither included a disclosure concerning the increased risks associated with leverage.
21. Another solicitor website that NFA reviewed stated, "some programs include segregated accounts, on-line statements, insurance policies and audits to increase investor safety and peace of mind" and "enjoy account security with regulated brokers." These statements were misleading in that they implied that *customers' forex funds receive special protection, which is untrue.*
22. Several other solicitor websites that NFA reviewed included claims of no commission trading. For example, the website, www.forextradingusa.com, stated, "no commission: only the profits are split with the customer" and "pay no commission when placing trades." The website, www.alohaforex.com, included the statement "commission free trades." Similarly, the website, www.brownforex.com, stated, "there are no commissions and there are no clearing fees." These claims were misleading in that they failed to disclose how the solicitors or FXCM are compensated.
23. In addition, several of the solicitor websites that NFA reviewed included claims touting guaranteed fills and precision execution. For example, one solicitor website stated, "our traders enjoy guaranteed fills at the specified price on all stop and limit orders, unlike customers of most other forex firms." Another solicitor

website included the claim that, "traders receive precision execution from real time streaming quotes 24 hours a day." These claims were misleading as fills cannot be guaranteed or "precision execution" assured under volatile market conditions.

24. Two solicitor websites that NFA reviewed included claims hyping the profit potential of trading forex. For example, one website stated, "trade with a higher success rate in both up and down periods," and "enjoy unlimited profit potential when you trade in the correct market direction." Another website claimed, "the Aloha Forex 20 minute trading system enables traders to generate an income by actively trading for 20 minutes per day or less" and "despite my success as a stock trader, I could make even more money, with less time, by trading the Forex (currency) market!" These claims were misleading in that they failed to mention risk of loss and, therefore, presented an unbalanced picture of the rewards and risks of forex trading.
25. On April 11, 2006, NFA staff met with FXCM personnel to discuss the deficiencies NFA had noted in the websites of FXCM's solicitors. Approximately a week later, NFA reviewed several of the solicitor websites again and noted that some of them still contained the same misleading claims that NFA had discussed with FXCM at the April 11 meeting. In August 2006, NFA again reviewed the solicitor websites and noted that several of them continued to include misleading claims similar to those noted in the earlier reviews.
26. The continued use of misleading advertising by FXCM's solicitors -- after FXCM was cited for failing to supervise its solicitors' websites in the 2005 BCC action

and after it had been repeatedly warned by NFA about deficiencies on its solicitors' websites -- evidences a serious failure on FXCM's part to adequately supervise the promotional material of its solicitors to ensure that it complied with NFA's promotional material requirements.

27. By reason of the foregoing acts and omissions, FXCM is charged with violations of NFA Compliance Rules 2-36(b)(1) and 2-36(c). Pursuant to NFA Compliance Rule 2-36(d), FXCM is also subject to discipline for the misleading promotional material, cited above, of its non-Member solicitors.

COUNT II

VIOLATION OF NFA COMPLIANCE RULE 2-9(c): FAILING TO ESTABLISH AND IMPLEMENT AN ADEQUATE ANTI-MONEY LAUNDERING PROGRAM.

28. The allegations contained in paragraphs 1, 3 through 5, and 9 are realleged as paragraph 28.
29. FXCM's AML procedures require FXCM to flag and monitor high-risk accounts for inappropriate activity. FXCM's procedures define "high-risk" as any account that originates from countries that have a history of fraud or that are identified as a high-risk jurisdiction, such as those countries that appear on the U.S. Treasury Office of Foreign Assets Control's list of non-cooperative countries and territories ("NCCT list").
30. During NFA's examination, NFA asked FXCM personnel if the firm carried any high-risk accounts, and the firm represented that it did and provided NFA with a list of these accounts, most of which originated in Macedonia and Indonesia. However, during subsequent audit work, NFA learned that FXCM had also opened approximately 100 accounts for customers from Nigeria. When FXCM

opened these accounts, Nigeria was listed as one of only two countries on the U.S. Treasury's NCCT list.

31. FXCM failed to identify the Nigerian accounts as "high-risk." Moreover, FXCM failed to perform any additional due diligence before accepting these accounts or *additional monitoring of the activity in these accounts, as required under the Interpretive Notice to NFA Compliance Rule 2-9(c).*
32. By reason of the foregoing acts and omissions, FXCM is charged with violations of NFA Compliance Rule 2-9(c).

COUNT III

VIOLATION OF NFA COMPLIANCE RULE 2-36(e): FAILURE TO SUPERVISE.

33. The allegations contained in paragraphs 1 through 5 and 10 are realleged as paragraph 33.
34. Niv, as CEO of FXCM, is responsible for the firm's overall operations. NFA met with Niv at the exit interview for the 2005 audit of FXCM, and also at a subsequent meeting at NFA's offices in Chicago. On both occasions, NFA discussed the substantial problems it had found with the promotional material of FXCM and its solicitors. NFA specifically admonished FXCM and Niv about making claims of commission free trading, no slippage execution, and special protection for customer funds. FXCM and Niv assured NFA that they would take corrective action to remove these types of claims from FXCM and its solicitors' promotional material. However, they failed to do so, which resulted in the BCC issuing the 2005 BCC Complaint against FXCM.

35. Even after FXCM settled the 2005 BCC Complaint by paying a substantial fine, FXCM and its solicitors continued to use promotional material that hyped commission free trading, no slippage execution, and special protections for customer funds. These facts evidence a continuing failure on the part of FXCM and Niv to adequately supervise FXCM's and its solicitors' use of promotional material.
36. In addition, Niv also failed to adequately oversee FXCM's AML program to ensure that FXCM identified, and performed additional due diligence and monitoring of, high-risk accounts.
37. By reason of the foregoing acts and omissions, FXCM and Niv are charged with violations of NFA Compliance Rule 2-36(e).

PROCEDURAL REQUIREMENTS

ANSWER

You must file a written Answer to the Complaint with NFA within thirty 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
200 West Madison Street
Suite 1600
Chicago, Illinois 60606-3447
Attn: Legal Department-Docketing

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 as a result of or 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.

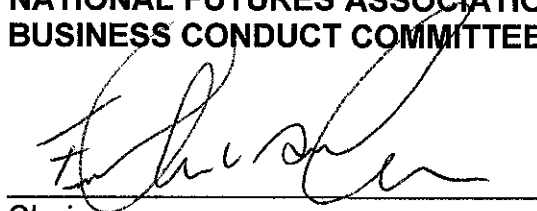
Pursuant to the provisions of CFTC Regulation 1.63 penalties imposed in connection with this Complaint may temporarily or permanently render Respondents who are individuals ineligible to serve on disciplinary committees, arbitration panels and

governing boards of a self-regulatory organization, as that term is defined in CFTC Regulation 1.63.

**NATIONAL FUTURES ASSOCIATION
BUSINESS CONDUCT COMMITTEE**

Dated: 12-8-06

By:


Chairperson

m/rvh/FXCM 2006 Complaint (12-12-06)

AFFIDAVIT OF SERVICE

I, Myra Lewis, on oath state that on December 8, 2006, I served copies of the attached Complaint, by sending such copies in the United States mail, first-class delivery, and by overnight mail, in envelopes addressed as follows:

Forex Capital Markets LLC
Financial Square
32 Old Slip
10th Floor
New York, NY 10005
Attn: James Sanders
Compliance Officer

Dror Niv
150 Southfield Avenue
Apt. 1447
Stanford, CT 06902

and also by messenger delivery to:

Arthur W. Hahn
Katten Muchin Zavis Rosenman
525 W. Monroe Street
Suite 1600
Chicago, IL 60661

Myra Lewis
Myra Lewis

Subscribed and sworn to before me
on this 8th day of December 2006.

Mary A. Patton
Notary Public

