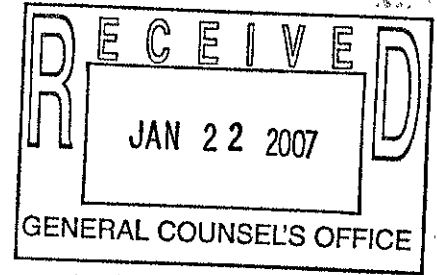


BEFORE THE
NATIONAL FUTURES ASSOCIATION



-----X
In the Matter of:

FOREX CAPITAL MARKETS, LLC

AND

NFA No. 06-BCC-046

DROR NIV

Respondents
-----X

ANSWER AND AFFIRMATIVE DEFENSES
OF
FOREX CAPITAL MARKETS, LLC AND DROR NIV

RECEIVED NFA
2007 JAN 22 AM 8:55

Forex Capital Markets, LLC ("FXCM") and Dror Niv ("Niv")(sometimes collectively "Respondents"), in response to the First Amended Complaint¹ issued by the Business Conduct Committee ("BCC"), state as follows:

¹ On or about December 8, 2006, the BCC apparently signed and issued a Complaint which was served upon Respondents in due course. On December 13, 2006, an unsigned copy of a corrected Complaint was served on counsel for Respondents by e-mail. Respondents have been advised by NFA staff that the unsigned December 13 Complaint was, in fact, properly approved and issued by the BCC and that it represents the allegations the BCC now intends to be at issue. Accepting this representation as true without conceding its legal effect, Respondents will refer hereafter to the unsigned December 13 Complaint as the First Amended Complaint.

ANSWER

1. Respondents admit the allegations in Paragraph One of the First Amended Complaint.
2. Respondents admit the allegations in Paragraph Two of the First Amended Complaint.
3. Respondents admit that FXCM has been registered as an FCM and NFA Member since June 2001 and denies the remaining allegations in Paragraph Three of the First Amended Complaint.
4. Respondents admit that NFA's BCC issued a Complaint against FXCM in November 2005 which Complaint was simultaneously settled. The documents reflecting the contents of the Complaint and Settlement speak for themselves. Respondents deny the remaining allegations in Paragraph Four of the First Amended Complaint.
5. Respondents admit that NFA commenced an audit of FXCM in January 2006 and deny the remaining allegations in Paragraph Five of the First Amended Complaint.
6. The allegations in Paragraph Six of the First Amended Complaint constitute conclusions of law as to which an answer is neither required nor proper. Nonetheless, Respondents deny those allegations and aver that NFA Compliance Rule 2-36 cannot form the basis of any finding or sanction in this case.
7. The allegations in Paragraph Seven of the First Amended Complaint constitute conclusions of law as to which an answer is neither required nor proper.

Nonetheless, Respondents deny those allegations and aver that NFA Compliance Rule 2-36 cannot form the basis of any finding or sanction in this case.

8. The allegations in Paragraph Eight of the First Amended Complaint constitute conclusions of law as to which an answer is neither required nor proper.

Nonetheless, Respondents deny those allegations and aver that NFA Compliance Rule 2-36 cannot form the basis of any finding or sanction in this case.

9. The allegations in Paragraph Nine of the First Amended Complaint constitute conclusions of law as to which an answer is neither required nor proper.

Nonetheless, Respondents deny those allegations and aver that NFA Compliance Rule 2-9 cannot form the basis of any finding or sanction in this case.

10. The allegations in Paragraph Ten of the First Amended Complaint constitute conclusions of law as to which an answer is neither required nor proper.

Nonetheless, Respondents deny those allegations and aver that NFA Compliance Rule 2-36 cannot form the basis of any finding or sanction in this case.

11. Respondents reallege their answers to Paragraphs 1 and 3 through 8 above.

12. Respondents deny the allegations in Paragraph Twelve of the First Amended Complaint.

13. Respondents admit that the language in quotation marks is accurately set forth, but deny the remaining allegations in Paragraph Thirteen of the First Amended Complaint.

14. Respondents deny the allegations in Paragraph Fourteen of the First Amended Complaint.

15. Respondents deny the allegations in Paragraph Fifteen of the First Amended Complaint.
16. Respondents deny the allegations in Paragraph Sixteen of the First Amended Complaint.
17. Respondents deny the allegations in Paragraph Seventeen of the First Amended Complaint.
18. Respondents deny the allegations in Paragraph Eighteen of the First Amended Complaint.
19. Respondents do not know the number of websites NFA “reviewed” and, therefore, deny the allegation that it reviewed “approximately 35.” Respondents deny the remaining allegations in Paragraph Nineteen of the First Amended Complaint.
20. Respondents admit that the language in quotation marks is accurately set forth, but deny the remaining allegations in Paragraph 20 of the First Amended Complaint.
21. Respondents admit that the language in quotation marks is accurately set forth, but deny the remaining allegations in Paragraph 21 of the First Amended Complaint.
22. Respondents admit that the language in quotation marks is accurately set forth, but deny the remaining allegations in Paragraph 22 of the First Amended Complaint.

23. Respondents admit that the language in quotation marks is accurately set forth, but deny the remaining allegations in Paragraph 23 of the First Amended Complaint.
24. Respondents admit that the language in quotation marks is accurately set forth, but deny the remaining allegations in Paragraph 24 of the First Amended Complaint.
25. Respondents admit that, on or about April 11, 2006, NFA staff met with FXCM personnel. Respondents do not know if, or when, NFA staff reviewed solicitation websites and, therefore, deny the allegations concerning any such review. Respondents deny the remaining allegations in Paragraph Twenty-Five of the First Amended Complaint.
26. The allegations in Paragraph Twenty-Six of the First Amended Complaint constitute conclusions of law as to which an answer is neither required nor proper. Nonetheless, Respondents deny those allegations.
27. The allegations in Paragraph Twenty-Seven of the First Amended Complaint constitute conclusions of law as to which an answer is neither required nor proper. Nonetheless, Respondents deny those allegations and aver that NFA Compliance Rule 2-36 cannot form the basis of any finding or sanction in this case.
28. Respondents reallege their answers to Paragraphs 1, 3 through 5, and 9 above.
29. Respondents admit the allegations in the first sentence of Paragraph Twenty-Nine of the First Amended Complaint, but deny the remaining allegations in Paragraph Twenty-Nine.

30. Respondents deny the allegations in Paragraph Thirty of the First Amended Complaint.
31. Respondents deny the allegations in Paragraph Thirty-One of the First Amended Complaint.
32. The allegations in Paragraph Thirty-Two of the First Amended Complaint constitute conclusions of law as to which an answer is neither required nor proper. Nonetheless, Respondents deny those allegations and aver that NFA Compliance Rule 2-9 cannot form the basis of any finding or sanction in this case.
33. Respondents reallege their answers to Paragraphs 1 through 5 and 10 above.
34. Respondents admit that NFA met with Mr. Niv and others during an exit interview for the 2005 FXCM audit. Those discussions were memorialized in documents exchanged by the parties thereafter and those documents speak for themselves. To the extent the allegations in Paragraph Thirty-Four are at variance with those documents, or constitute conclusions of law, Respondents deny them.
35. Respondents admit that FXCM settled the 2005 BCC Complaint. The terms of that settlement are contained in a settlement document which document speaks for itself. Respondents deny the remaining allegations in Paragraph Thirty-Five of the First Amended Complaint.
36. The allegations in Paragraph Thirty-Six of the First Amended Complaint constitute conclusions of law as to which an answer is neither required nor proper. Nonetheless, Respondents deny them.

37. The allegations in Paragraph Thirty-Seven of the First Amended Complaint constitute conclusions of law as to which an answer is neither required nor proper. Nonetheless, Respondents deny those allegations and aver that NFA Compliance Rule 2-36 cannot form the basis of any finding or sanction in this case.

AFFIRMATIVE DEFENSES

1. The First Amended Complaint, in relying on NFA Compliance Rules 2-9 and 2-36, fails to state a claim on which relief can be granted because, under Section 2(a) of the Commodity Exchange Act, as amended, 7 U.S.C. § 2(a), and other relevant legal authority, NFA lacks the authority and/or jurisdiction to sanction FXCM.
2. The First Amended Complaint, in relying on NFA Compliance Rules 2-9 and 2-36, fails to state a claim on which relief can be granted because, under Sections 2(c) and 17 of the Commodity Exchange Act, as amended, 7 U.S.C. §§ 2(c) and 21, and other relevant legal authority, NFA lacks the authority and/or jurisdiction to enact or enforce those Rules.
3. The First Amended Complaint, in relying on NFA Compliance Rule 2-36, fails to state a claim on which relief can be granted in that it fails to allege, as it must, that FXCM engaged in any wrongful conduct in connection with a “foreign currency futures or options” transaction.
4. The First Amended Complaint, in relying on NFA Compliance Rule 2-36, fails to state a claim on which relief can be granted because FXCM did not engage in any wrongful conduct in connection with “foreign currency futures or options.”

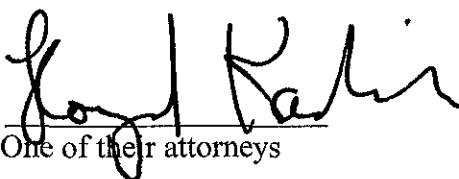
5. The First Amended Complaint, in relying on NFA Compliance Rule 2-36, fails to state a claim on which relief can be granted because NFA Compliance Rule 2-36 is void for vagueness in violation of the Due Process Clause of the United States Constitution.
6. The First Amended Complaint, in relying on alleged conduct which predates November 28, 2005, fails to state a claim on which relief can be granted because such reliance violates, among other things, principles of accord and satisfaction.
7. The First Amended Complaint, in relying on alleged conduct which predates November 28, 2005, fails to state a claim on which relief can be granted because such reliance violates, among other things, principles of *res judicata*.
8. The First Amended Complaint, in relying of NFA Compliance Rules 2-9 and 2-36, fails to state a claim on which relief can be granted because such reliance violates, among other things, 7 U.S.C. § 19, Article III of the NFA Articles of Incorporation, the antitrust laws of the United States, and other relevant legal authority.
9. The First Amended Complaint, in relying on NFA Compliance Rules 2-9 and 2-36, fails to state a claim on which relief can be granted because it represents a selective prosecution of FXCM.
10. The First Amended Complaint fails to state a claim on which relief can be granted because it seeks to retaliate, in violation of the First Amendment of the United States Constitution, for the lawful activities of FXCM in petitioning the

Congress of the United States to legislate in ways contrary to those endorsed or proposed by NFA.

WHEREFORE, Respondents Forex Capital Market, LLC and Dror Niv respectfully request that the First Amended Complaint be dismissed with prejudice.

Respectfully Submitted,

Forex Capital Markets, LLC
Dror Niv

By: 
One of their attorneys

Lloyd Kadish
Lloyd Kadish & Associates, Ltd.
345 North Canal Street, Suite 901
Chicago, IL 60606

Telephone: 312-559-9181

Dated: January 22, 2007