

transactions. Moreover, the firm has failed to make its sole owner and chief executive officer ("CEO"), Onelio Murias ("Murias") available to NFA's audit team to answer questions necessary for NFA to complete its audit. In addition, Forward Forex has refused to provide NFA with an executed management representation letter – which is required in all NFA audits – confirming that information they provided to NFA in the course of the audit is true and correct. As a result, NFA has not only been denied information but it is unable to place any reliance on the information it has received.

In support of these actions, NFA attaches the affidavit of Jennifer Sunu ("Sunu"), who is a Director in NFA's Compliance Department, and based thereon alleges as follows:

1. Forward Forex has been a registered FCM since January 30, 2006, and the firm began acting as an FDM shortly thereafter. The firm lists its main business office in Hollywood, Florida.
2. Forward Forex lists Murias and Marshall Wertheim ("Wertheim") as principals. Murias is the firm's sole owner and CEO. Wertheim is the firm's president and only associated person ("AP"). Wertheim is also an NFA Associate.
3. On June 18, 2007, NFA commenced its annual examination of Forward Forex. The firm's CEO, Murias, was present at Forward Forex's offices when NFA arrived. However, he left the offices less than an hour later and, since then, has not been present at Forward Forex's offices while NFA's audit team has been there.
4. As Wertheim is the sole AP/principal of the firm, NFA's audit team requested general information from him about the firm's operations, such as the number of customer accounts, customer complaints, the firm's current business, names of counterparties with which Forward Forex does business, and procedures related to supervising the firm. However, Wertheim indicated it would be more appropriate for NFA to ask Murias these questions.
5. During this initial interview, which occurred on the first day of the audit (June 18, 2007), the audit team reminded Wertheim that, as Forward Forex's sole AP/principal, he should be able to answer general questions about the firm's operations. However, Wertheim claimed that he did not know why he was listed as the sole AP/principal of the firm, as his only responsibility at the firm was to enter trades and operate the firm's order desk. Wertheim also indicated that Murias told him that Forward Forex needed an individual to be an AP/principal of the firm, and that Wertheim's principal status would only be temporary, until Forward Forex could find someone else to be the AP/principal of the firm.
6. The following day, June 19, 2007, NFA's audit team met again with Wertheim to discuss his role at the firm, as well as the roles of other individuals employed by Forward Forex. Wertheim reiterated that he was only responsible for the firm's order desk and for monitoring the trading platform to verify that all trades are reflected properly. He told the NFA auditors that he had no ownership in

Forward Forex and no supervisory responsibilities. Wertheim said that no employees report to him, that he makes no hiring or firing decisions, and that he is not an authorized signatory for Forward Forex.

7. Wertheim represented that Murias is the sole owner and CEO of Forward Forex, the sole signer on the firm's bank accounts, and the only person who is able to enter into contracts on behalf of the firm. Wertheim further represented that Murias is responsible for deciding with which solicitors to do business and conducting on-site reviews of solicitors. In addition, Wertheim represented that Murias, along with an individual named Larry Freedberg ("Freedberg"), is also responsible for investigating and responding to customer complaints. Wertheim said that Murias reports to no one else at the firm.
8. Wertheim told NFA auditors that Todd Guthrie ("Guthrie") is Forward Forex's accountant, and – together with Murias – is responsible for preparing the firm's financial books and records. According to Wertheim, Guthrie reports directly to Murias. Wertheim said that Murias submits the monthly Form 1-FR-FCMs on behalf of the firm.
9. Wertheim represented that Victoria Alyea ("Alyea") runs the firm's compliance department, approves account opening paperwork, and oversees the firm's anti-money laundering program. According to Wertheim, Alyea reports directly to Murias.
10. NFA auditors also spoke with Alyea, who confirmed Wertheim's representations concerning her responsibilities at the firm. Like Wertheim, Alyea told NFA auditors that Murias is the 100% owner of the firm; that he supervises all of the firm's operations; that all firm personnel report to him either directly or indirectly; that he is the sole signatory on all the firm's cash accounts; that he supervises payroll processing; that he negotiates and executes all agreements between Forward Forex and unregulated solicitors, counterparties and vendors; and that he also handles customer complaints. Furthermore, Alyea said that Murias is the firm's security manager and the only person authorized to enter or change registration information on behalf of the firm.
11. During the course of the examination, NFA's auditors asked Wertheim, Guthrie and Alyea numerous questions which they were unable or unwilling to answer. They repeatedly told the auditors that they should address their questions to Murias. However, Murias has failed to make himself available – in person or otherwise – to answer NFA's questions.
12. On the morning of June 20, 2007, NFA sent an e-mail to Murias' business e-mail account, forwardforex@yahoo.com, requesting that he appear at Forward Forex's offices at 2:00 p.m. that day to answer NFA's questions. However, Murias failed to appear at the meeting. NFA also left Murias a voice-mail message on his cell phone requesting his presence to assist NFA in completing its examination, but Murias has never responded to this message.

13. On June 20, 2007, NFA sent a second e-mail message to Murias reminding him of the responsibility of NFA Members to cooperate promptly and fully with NFA in an audit or examination. This e-mail message also required Murias to appear at Forward Forex's office by 10:00 a.m. on June 21, 2007. However, Murias again failed to appear.
14. On the afternoon of June 21, 2007, NFA received an e-mail from Christopher King ("King"), an attorney with the Homer Bonner law firm, stating that King had advised Murias not to appear at Forward Forex's offices due to his concern that NFA was seeking to question Murias about issues that were relevant to a pending Business Conduct Committee Complaint against the firm. King's e-mail stated that Murias would answer NFA's questions unrelated to the pending Complaint, provided that such questions were put in writing and directed to King.
15. That same day, NFA Associate General Counsel Ron Hirst ("Hirst") sent an e-mail response to King advising King that NFA staff were not attempting to gather evidence in connection with the pending Complaint but, merely, attempting to conduct a regularly scheduled annual audit of the firm. Hirst further stated in his e-mail that the pending Complaint did not suspend NFA's audit responsibilities and that, because Forward Forex was an FCM, NFA had an obligation under Commodity Futures Trading Commission ("CFTC") Rules to audit the firm at least annually. Hirst indicated that, since Forward Forex's last exam occurred in June 2006, it was due for its 2007 audit. Hirst also stated that Murias was required to appear and cooperate with NFA in the course of the audit, or the firm would risk further disciplinary action for failing to cooperate.
16. Later that day, Hirst had a telephone conversation with King in which he agreed to defer questioning of Murias provided Wertheim could answer NFA's questions and respond to its document requests.
17. On June 22, 2007, the NFA audit team met with Wertheim, Alyea and attorney Frank Sanchez ("Sanchez"), of the Homer Bonner firm, in an attempt to obtain the information necessary for NFA to complete audit testing. However, Wertheim and Alyea were unable to provide much of the information requested by NFA, e.g., information about customer complaints, promotional material used by the firm and its unregistered solicitors, and numerous financial transactions. As a result, it became clear to NFA's auditors that Murias' cooperation would be needed for NFA to complete audit fieldwork. Moreover, at the June 22 meeting, Sanchez refused to allow NFA auditors to ask any questions relating to Forward Forex's promotional material, websites, or customer complaints. Sanchez claimed these were all items related to the pending Complaint.
18. On June 25, 2007, Hirst sent an e-mail to Homer Bonner informing them of Wertheim's inability to answer many of the audit team's questions at their meeting on June 22, 2007. Hirst also emphasized that because of Wertheim's representations that everyone at Forward Forex reports to Murias and that Murias supervises the firm's regulated activity in every respect, it was imperative for Forward Forex to make Murias available to the NFA audit team for

questioning. Hirst stressed that Forward Forex's failure to make Murias available immediately could constitute a failure to cooperate on the firm's part, in violation of NFA Compliance Rule 2-5.

19. That same day (June 25, 2007), NFA's audit team requested Wertheim, Alyea and Guthrie to contact Murias and advise him that his presence at the firm was needed for NFA to complete audit fieldwork. The audit team also contacted attorney Sanchez and explained that the team expected Murias to come to Forward Forex's offices to answer the questions that Wertheim and Alyea had been unable to answer the previous week. Finally, NFA left a message for Murias on his cell phone, indicating that he was expected to cooperate with NFA's audit and make himself available to answer questions.
20. From June 25 through June 27, 2007, NFA's audit team repeatedly asked Wertheim, Alyea and Guthrie if they had heard from Murias and if Murias was planning to cooperate with the NFA audit. Wertheim and Alyea indicated that they had not heard from Murias, and Guthrie indicated that he had spoken with Murias, but was unsure if Murias would meet with NFA staff.
21. On June 27, 2007, NFA e-mailed a letter to attorney King at Homer Bonner, requiring Murias to make himself available in person at Forward Forex's offices on Thursday, June 28, 2007, at 12:00 noon, to answer the audit team's questions and provide information vital to the completion of NFA's examination. However, Murias did not appear as required.
22. In the afternoon of June 28, 2007, NFA received an e-mail from attorney King who stated that Forward Forex was diligently working to answer NFA's outstanding questions. King claimed surprise at NFA's continued demand that Murias make himself available in person for questioning. King represented that Murias could not make himself available in person as he was out of town. This was the first that NFA had been advised that Murias was out of town. In fact, just two days earlier – on June 26, 2007 – Guthrie had informed NFA's auditors that he was meeting with Murias that evening.
23. NFA's audit team immediately responded to King's e-mail. The audit team advised King that it was willing to speak with Murias by teleconference, provided Murias could do so prior to NFA's exit conference which was scheduled for 11:00 a.m. the following day (June 29, 2007). The audit team also pointed out that no one at Forward Forex or at Homer Bonner had previously mentioned to NFA's auditors that Murias was out of town.
24. Murias did not contact, or make himself available to, NFA's audit team on June 29, 2007. Further, attorney King informed NFA that he did not receive the audit team's June 28, 2007 e-mail until the morning of June 29 and that he could not tell NFA when Murias would be available.
25. To date, NFA has been unable to obtain answers from Wertheim, Alyea, Guthrie, or anyone else at Forward Forex, to the following questions:

Forward Forex is entitled to a prompt hearing on this matter before NFA's Hearing Committee if they so request. The request for a hearing shall be made in writing to:

National Futures Association
200 West Madison Street
Suite 1600
Chicago, IL 60606-3447
Attn: Legal Docketing Department

Aggrieved parties may petition the CFTC for a stay of this MRA pending a hearing pursuant to and in conformity with the terms set forth in CFTC Regulation 171.41.

NATIONAL FUTURES ASSOCIATION

Date: July 6, 2007

By: 

Daniel J. Roth, President

M:\rvh\ Forward Forex MRA (Revised, 7-3-07)

AFFIDAVIT

THE AFFIANT, JENNIFER SUNU, BEING DULY SWORN AND UNDER OATH STATES THAT:

1. My name is Jennifer Sunu, and I am employed by National Futures Association ("NFA") as a Director in the Compliance Department. In my capacity as a Director, I oversee the team that has been auditing Forward Forex, Inc. ("Forward Forex").
2. Forward Forex has been a registered futures commission merchant ("FCM") since January 30, 2006, and the firm began acting as an Forex Dealer Member ("FDM") shortly thereafter. The firm lists its main business office in Hollywood, Florida.
3. Forward Forex lists Onelio Murias ("Murias") and Marshall Wertheim ("Wertheim") as principals. Murias is the firm's sole owner and chief executive officer ("CEO"). Wertheim is the firm's president and only associated person ("AP"). Wertheim is also an NFA Associate.
4. On June 18, 2007, NFA commenced its annual examination of Forward Forex. The firm's CEO, Murias, was present at Forward Forex's offices when NFA arrived. However, he left the offices less than an hour later and, since then, has not been present at Forward Forex's offices while NFA's audit team has been there.
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