

**BEFORE THE  
NATIONAL FUTURES ASSOCIATION**

In the Matter of:

FOREX LIQUIDITY LLC  
(NFA ID #362216)

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NFA Docket No. 07-MRA-013

**NOTICE OF MEMBER RESPONSIBILITY ACTION  
UNDER NFA COMPLIANCE RULE 3-15**

National Futures Association ("NFA") hereby gives notice to Forex Liquidity LLC ("FXLQ"), a futures commission merchant ("FCM") and Forex Dealer NFA Member that, pursuant to NFA Compliance Rule 3-15, the President of NFA, with the concurrence of NFA's Executive Committee, has taken a Member Responsibility Action ("MRA") against FXLQ whereby:

1. Effective immediately, FXLQ is prohibited from soliciting or accepting any additional customer accounts or customer funds, except as security deposits for existing positions. The prohibition on solicitation includes, without limitation, ceasing solicitation through the firm's website.
2. Effective immediately, FXLQ is prohibited from accepting or placing trades for any customer accounts except for the rollover or liquidation of currently existing customer positions. FXLQ must obtain the ongoing assent of customers to rollover any customer's existing positions.
3. FXLQ is required to liquidate all Forex positions held in any account for FXLQ or any FXLQ principal except for positions that are held to offset FXLQ's exposure resulting from its customers' positions by 3:00 p.m. (PST) on Wednesday, December 5, 2007, and, further, is prohibited from initiating any additional positions in such accounts.
4. FXLQ is prohibited from distributing, disbursing or transferring any funds, including to existing customers, without the prior approval of NFA.
5. Unless otherwise authorized by NFA in writing, FXLQ must transfer any and all assets not currently held at US Bank or an NFA Member FCM to US Bank or an NFA Member FCM by 3:00 p.m. (PST) on Wednesday, December 5, 2007, and provide documentation that such transfer has occurred.
6. FXLQ is required to produce to NFA financial statements including

net capital computations as of December 4, 2007. The financial statements must properly reflect all assets and liabilities and the firm's current capital position as well as a listing of all current assets and liabilities and provide third party documentation supporting the existence and location of those items.

7. This MRA shall remain in effect until such time as FXLQ has demonstrated to the satisfaction of NFA that it is in complete compliance with all NFA requirements. In making such a demonstration FXLQ must provide NFA with an internal control report and certified financial statement, which are prepared by an independent public accountant who is registered under Section 102 of the Sarbanes-Oxley Act and has demonstrated experience and competence in auditing matters required under Section 404 of the Sarbanes-Oxley Act.

The internal control report shall contain, at a minimum, a detailed explanation of the examination performed by the accountant and a representation by the accountant that it has examined and tested FXLQ's system of internal controls to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles ("GAAP"), including those policies and procedures that:

- a. Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets and customer liabilities of FXLQ;
- b. Provide reasonable assurance that the transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures are being made only in accordance with authorizations of management and directors of FXLQ; and
- c. Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of FXLQ's assets and customer liabilities that could have a material effect on the financial statements.

The internal control report must contain a representation by the public accountant that it has found FXLQ's system of internal controls has no material weaknesses and that it is adequate for establishing and maintaining internal control over financial reporting by FXLQ.

8. In taking any action under this MRA, FXLQ must act in the best interests of its customers.

This action is effective immediately and is deemed necessary to protect customers because FXLQ has failed to demonstrate that it meets the capital requirements of NFA Financial Requirements Sections 1 and 11. Additionally, FXLQ provided materially false or misleading information to NFA.

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

1. FXLQ is an FCM and Forex Dealer Member of NFA located in Santa Ana, California. FXLQ has been registered as an FCM and NFA Member since February 2006.
2. On FXLQ's 1-FR-FCM dated October 31, 2007, which FXLQ submitted to NFA on November 26, 2007, there is listed as current assets securities with a market value of approximately \$41 million.
3. In August 2007, during an examination by NFA, NFA noted that FXLQ's June 30, 2007, 1-FR-FCM listed as current assets securities with a market value of \$35 million. FXLQ represented that this amount was solely attributable to a bond issued by ABN-AMRO. FXLQ further represented that this bond was being held at Malory Investments ("Malory"), a registered broker-dealer.
4. During the examination, FXLQ provided NFA with documents that FXLQ represented were account statements from Malory to support the representation that the ABN-AMRO bond, as well as other cash assets of the firm, were being held at Malory.
5. FXLQ has represented to NFA that it obtained the ABN-AMRO bond from its president and principal, Robert Gray ("Gray"), who in turn obtained it from a company called Swiss Imperial Trust A.G. ("Swiss Imperial") in exchange for contractual services.
6. On November 28, 2007, NFA received documents from the Financial Industry Regulatory Authority ("FINRA") (formerly NASD) evidencing that the ABN-AMRO bond and cash, which FXLQ represented were being held at Malory, were actually being held in Switzerland by Swiss Imperial in an account in the name of Malory.
7. NFA has obtained information indicating that the owner of Swiss Imperial is also a part owner and principal of Malory.
8. As it appeared that the ABN-AMRO bond had never left the possession of Swiss Imperial, and that the information provided by FXLQ regarding where the bond and other firm assets were being

held were not accurate, NFA informed FXLQ that it did not exercise sufficient control over the bond and the cash held by Swiss Imperial to qualify them as current assets. Accordingly, on November 29, 2007, NFA directed FXLQ to cause all firm assets being held at Swiss Imperial to be transferred to a regulated United States financial institution by 5:00 p.m. on Friday, November 30<sup>th</sup>, and provide evidence of such transfer.

9. The same day that NFA directed FXLQ to execute the transfer described above, FXLQ represented that it was unaware that the ABN-AMRO bond and firm cash were being held at Swiss Imperial. FXLQ, however, represented that it had been working on transferring the ABN-AMRO bond and firm cash to a United States bank for approximately a week. When NFA asked for the name of the bank to which the assets were being transferred, Gray was unable to recall the full name of the bank, but indicated it included the word "Commonwealth" in its name.
10. On December 1, 2007, FXLQ sent e-mails to NFA in which it represented that the transfer had been effected from Swiss Imperial to "Commonwealth." FXLQ represented that the transfer only included cash, thereby suggesting that the ABN-AMRO bond had been liquidated.
11. On December 3<sup>rd</sup>, FXLQ represented to NFA that the transfer had been made to Commonwealth Financial Network ("CFN"), a registered broker-dealer, and provided NFA with an account number and CFN's web site address.
12. On December 4, 2007, NFA spoke with CFN and the firm represented that it did not have an account for FXLQ and that the account number that FXLQ provided to NFA was fictitious.
13. On December 4, 2007, FXLQ's General Counsel forwarded to NFA a letter from a firm identifying itself as "Commonwealth Financial P.M.S.", which indicated that FXLQ c/o Robert Gray has funds in the amount of \$47,800,000 on deposit in an account at Commonwealth Financial P.M.S. This letter contained CFN's web site address. NFA subsequently spoke with CFN's chief compliance officer who indicated that Commonwealth Financial P.M.S. is not in any way affiliated with CFN. NFA staff then informed FXLQ's General Counsel that CFN has represented to NFA that it does not have an account for FXLQ, the account number provided to NFA was fictitious, and Commonwealth Financial P.M.S. is not in any way affiliated with CFN.

14. The Commonwealth Financial P.M.S. letter was purportedly signed by an individual named Tom Smith. NFA spoke with Tom Smith on December 4, 2007, who confirmed the contents of the letter and stated that Commonwealth Financial P.M.S. was a registered broker-dealer and provided NFA with the firm's purported CRD number. NFA then contacted FINRA and learned that the CRD number provided by Tom Smith was that of a former broker dealer that has not been registered since 1991. FINRA also confirmed that Commonwealth Financial P.M.S. is not currently a registered broker dealer.
15. On December 3<sup>rd</sup>, FXLQ also provided NFA with net capital computations that purported to show that, as of November 30, 2007, FXLQ is in capital compliance. One computation included the assets purportedly at "Commonwealth." A second computation purported to show that even if the assets that FXLQ claims are at "Commonwealth" are non-current assets the firm would be in capital compliance.
16. FXLQ's October 31, 2007, Form 1-FR-FCM included a liability of accounts payable and accrued expenses of approximately \$10 million, which was not included, however, in either of FXLQ's November 30<sup>th</sup> net capital calculations. On December 3, 2007, NFA requested that FXLQ provide evidence that the accounts payable and accrued expenses listed on its October 31, 2007, 1-FR-FCM had been paid.
17. Both of FXLQ's November 30<sup>th</sup> calculations also indicated that over \$11.2 million of FXLQ's assets are being held at Malory. FINRA has advised NFA, however, that it has been unable to confirm that Malory's bank accounts have anything approaching this amount.
18. On December 4, 2007, NFA directed FXLQ to transfer the funds that it claims are at Malory to the firm's bank account at US Bank. Further, NFA again directed FXLQ to provide evidence that the accounts payable and accrued expenses listed on its October 31, 2007, Form 1-FR-FCM had been paid, and directed the firm to provide a complete listing of the firm's liabilities including support for such liabilities. NFA gave FXLQ until 3:00 p.m. (PST) to comply with these directives and FXLQ failed to comply.
19. As of December 4<sup>th</sup>, FXLQ has failed to provide to NFA any independent credible evidence that any assets purportedly held at Swiss Imperial or Malory have actually been transferred. Nor has the firm provided support for its liabilities or independent evidence of its compliance with applicable NFA financial requirements.

20. Accordingly, as of December 4, 2007, FXLQ has failed to demonstrate that it is in compliance with NFA's capital and other Financial Requirements. Further, FXLQ provided materially false or misleading information to NFA.

The MRA will remain in effect until such time as FXLQ has demonstrated to the satisfaction of NFA that it is in complete compliance with all NFA Requirements. FXLQ is required to provide copies of this MRA, by overnight courier, to all of its customers, to all banks and other financial institutions with which it has money on deposit, and to all persons that solicit or introduce customers to FXLQ or that manage customer accounts held at FXLQ.

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

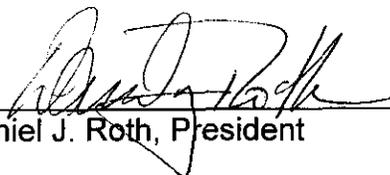
National Futures Association  
200 West Madison Street  
Suite 1600  
Chicago, IL 60606-3447  
Attn: Legal Docketing Department

Aggrieved parties may petition the Commodity Futures Trading Commission ("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: December 4, 2007

By:

  
Daniel J. Roth, President

## 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 of Director, I led a team that has been investigating Forex Liquidity LLC ("FXLQ"), a futures commission merchant ("FCM") and Forex Dealer Member of NFA located in Santa Ana, California. FXLQ has been registered as an FCM and NFA Member since February 2006.
2. On FXLQ's 1-FR-FCM dated October 31, 2007, which FXLQ submitted to NFA on November 26, 2007, there is listed as current assets securities with a market value of approximately \$41 million.
3. In August 2007, during an examination by NFA, NFA noted that FXLQ's June 30, 2007, 1-FR-FCM listed as current assets securities with a market value of \$35 million. FXLQ represented that this amount was solely attributable to a bond issued by ABN-AMRO. FXLQ further represented that this bond was being held at Malory Investments ("Malory"), a registered broker-dealer.
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7. NFA has obtained information indicating that the owner of Swiss Imperial is also a part owner and principal of Malory.

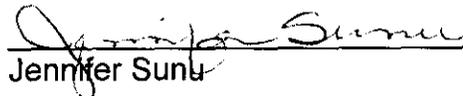
8. As it appeared that the ABN-AMRO bond had never left the possession of Swiss Imperial, and that the information provided by FXLQ regarding where the bond and other firm assets were being held were not accurate, NFA informed FXLQ that it did not exercise sufficient control over the bond and the cash held by Swiss Imperial to qualify them as current assets. Accordingly, on November 29, 2007, NFA directed FXLQ to cause all firm assets being held at Swiss Imperial to be transferred to a regulated United States financial institution by 5:00 p.m. on Friday, November 30<sup>th</sup>, and provide evidence of such transfer.
9. The same day that NFA directed FXLQ to execute the transfer described above, FXLQ represented that it was unaware that the ABN-AMRO bond and firm cash were being held at Swiss Imperial. FXLQ, however, represented that it had been working on transferring the ABN-AMRO bond and firm cash to a United States bank for approximately a week. When NFA asked for the name of the bank to which the assets were being transferred, Gray was unable to recall the full name of the bank, but indicated it included the word "Commonwealth" in its name.
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NFA that it does not have an account for FXLQ, the account number provided to NFA was fictitious, and Commonwealth Financial P.M.S. is not in any way affiliated with CFN.

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18. On December 4, 2007, NFA directed FXLQ to transfer the funds that it claims are at Malory to the firm's bank account at US Bank. Further, NFA again directed FXLQ to provide evidence that the accounts payable and accrued expenses listed on its October 31, 2007, Form 1-FR-FCM had been paid, and directed the firm to provide a complete listing of the firm's liabilities including support for such liabilities. NFA gave FXLQ until 3:00 p.m. (PST) to comply with these directives and FXLQ failed to comply.

19. As of December 4<sup>th</sup>, FXLQ has failed to provide to NFA any independent credible evidence that any assets purportedly held at Swiss Imperial or Malory have actually been transferred. Nor has the firm provided support for its liabilities or independent evidence of its compliance with applicable NFA financial requirements.

Further Affiant sayeth not.

  
Jennifer Sunu

Subscribed and sworn to before me  
on this 4<sup>th</sup> day of December 2007.

  
Notary Public



## AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on December 4, 2007, I served copies of the attached Notice of Member Responsibility Action by sending such copies by facsimile and overnight mail in envelopes addressed as follows:

David Stawick, Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581  
Facsimile No.: 202/418-5521

Lawrence B. Patent  
Deputy Director, Compliance and Registration  
Division of Clearing and Intermediary Oversight  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581  
Facsimile: 202/418-5536

and by also sending a copy by facsimile and regular and overnight mail in envelopes addressed as follows:

Frank N. Masino, Esq.  
Seventy Sonora Way  
Corte Madera, CA 94925  
Facsimile No: 415/927-3038

and by sending a copy by e-mail and regular and overnight mail in envelopes addressed as follows:

Robert Gray  
President  
Forex Liquidity LLC  
6 Hutton Centre Drive  
Suite 1400  
Santa Ana, CA 92707  
E-mail: [rogray@gmail.com](mailto:rogray@gmail.com)

  
Nancy Miskovich-Paschen

Subscribed and sworn to before  
me on this 4<sup>th</sup> day of December, 2007.

  
Notary Public

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