



Associate. Michael Klena (Klena) is FX Club's current CEO and has been an AP of FX Club and an NFA Associate since March 2012.

3. Evgeny Berzitskiy (Berzitskiy) has been the firm's Chief Dealer since January 2007 and the chief compliance officer since March 2012. Kevin P. Kelly (Kelly) is the firm's chief financial officer (CFO). Kelly and Berzitskiy each reported to Tatarnikov, who was ultimately responsible for supervision of the firm's operations during the time period relevant to this Complaint.

### **BACKGROUND**

4. In January 2011, NFA commenced a routine examination of FX Club. Overall, NFA found that the firm had serious financial recordkeeping deficiencies and a lack of adequate internal controls. NFA had cited the firm for similar deficiencies in prior examinations.
5. In addition to these repeat deficiencies, NFA also discovered that FX Club failed to develop an adequate anti-money laundering (AML) program or conduct an adequate review of its promotional material.
6. In response to the financial deficiencies uncovered by NFA's January 2011 exam, FX Club hired Compliance Supervisors, Inc. (CSI) to conduct a review of the firm's internal financial controls. On August 31, 2011, CSI issued a report which noted some of the same findings as NFA had made in its January 2011 audit, made several additional findings, and recommended that FX Club implement a host of new policies and procedures to rectify FX Club's internal deficiencies. In response, FX Club notified NFA that it intended to fully implement these recommendations.

7. In order to ensure that FX Club had begun the implementation of CSI's recommendations, NFA shortened FX Club's audit cycle and started another audit of the firm in November 2011. Unfortunately, this audit likewise showed that FX Club was still deficient in the same critical areas as NFA's prior exam. In particular, NFA found that the firm still lacked basic accounting practices and that it had serious financial recordkeeping deficiencies. For example, the firm repeatedly overstated its customer liability balance, which in turn caused the firm to underreport its excess net capital (ENC) on its 1-FR Form.
8. In addition, NFA's November 2011 audit found that FX Club routinely included fictitious so-called "true up" balances on its general ledger so as to reconcile the customer liability balance with the firm's equity run total. (The term "true up" balance refers to the figure necessary to reconcile the customer liability balance on the general ledger with the firm's equity-run total.) Likewise, the firm also included "plug-in" balances on its Changes in Ownership Equity (CHOE) form so that the firm's CHOE filing would agree to the ending ownership equity on the firm's 1-FR balance sheet. (The term "plug-in" balance is the number necessary to reconcile the information in the CHOE form with the ending ownership equity on the firm's 1-FR balance sheet.)
9. As a result of the above financial deficiencies, FX Club could not accurately support its customer liability balance, and therefore, was unable to determine its true capital position. Moreover, the firm's 1-FR monthly filings were repeatedly inaccurate.
10. In addition to these deficiencies, NFA also discovered that FX Club did not

adequately supervise its customer trading operations, and failed to implement an adequate AML program or submit all promotional material to NFA for pre-approval, as it was required to do as a result of it being subject to NFA Enhanced Supervisory Requirements. Furthermore, the firm failed to file both financial statements and forex filings in a timely manner, and failed to file accurate trade data reports.

11. Given NFA's serious concerns regarding FX Club's lack of internal controls and its financial recordkeeping, NFA advised FX Club in May 2012 to immediately implement certain remedial measures. Among these measures, FX Club had to provide an internal control report and an annual 2012 financial statement to NFA. These documents were required to be prepared and certified by an independent public accountant who is registered under the Sarbanes-Oxley Act. The results of NFA's most recent exam of FX Club as well as the events leading up to that exam are alleged below.

#### **APPLICABLE RULES**

12. NFA Compliance Rule 2-10(a) provides that each Member shall maintain adequate books and records necessary and appropriate to conduct its business including, without limitation, the records required to be kept under Commodity Futures Trading Commission (CFTC) Regulations 1.18 and 1.32 through 1.37 for the period required under CFTC Regulation 1.31.
13. NFA Financial Requirements Section 15(a) provides, in pertinent part, that no Member may act as an FDM unless it has demonstrated to NFA that the Member has adequate internal financial controls. The FDM must demonstrate that its

system of internal controls provides reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. The FDM must also demonstrate that its system of internal financial controls has no material weaknesses and that it is adequate for establishing and maintaining internal controls over financial reporting by the Member.

14. NFA Compliance Rule 2-9(c) provides, in pertinent part, that each Member FCM and IB shall develop and implement a written AML program approved in writing by senior management reasonably designed to achieve and monitor the Member's compliance with the applicable requirements of the Bank Secrecy Act.
15. NFA Financial Requirements Section 10 provides, in pertinent part, that each financial report required by Section 1, 5, 6 or 11 that is filed after it is due shall be accompanied by a fee of \$200 for each business day it is late.
16. NFA Financial Requirements Section 13 provides, in pertinent part, that each FDM must file daily electronic reports showing liabilities to customers and other financial or operational information required by NFA. Section 13(b) further provides that each daily report that is filed after it is due shall be accompanied by a fee of \$200 for each business day it is late.
17. NFA Compliance Rules 2-48(a) and (b) provide, in pertinent part, that each FDM must file a daily electronic report of trade data with NFA, the data must be in the format prescribed by NFA and by submitting the report, each FDM certifies that the report is true and accurate.

18. NFA Compliance Rule 2-36(g) provides, in pertinent part, that the Compliance Director may require any FDM for any specified period to file copies of all promotional material with NFA for its review and approval at least ten days prior to its first use or such shorter period as NFA may allow.
19. NFA Compliance Rule 2-36(e) provides that each FDM shall diligently supervise its employees and agents in the conduct of their forex 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 forex activities for or on behalf of the FDM.

### COUNT I

**VIOLATION OF NFA COMPLIANCE RULE 2-10 AND NFA FINANCIAL REQUIREMENTS SECTION 15(a): FAILING TO MAINTAIN ADEQUATE BOOKS AND RECORDS AND FAILING TO MAINTAIN ADEQUATE INTERNAL CONTROLS AND FINANCIAL RECORDS.**

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20. The allegations set forth in paragraphs 1 through 13 are realleged as paragraph 20.
21. Before starting the November 2011 exam, NFA received a copy of CSI's recommendations, which specifically described seventeen internal control procedures that FX Club should put into practice. Although FX Club informed NFA it was in the process of doing this, the firm's September 2011 1-FR filing indicated otherwise. Specifically, the firm's September 2011 1-FR, which was filed late, showed a drastic and material drop in ENC when compared with the August 1-FR filing (\$274,451 in September 2011 compared to \$988,102 in August 2011).

22. Since this material reduction in ENC placed the firm dangerously close to falling below its minimum capital requirement, NFA contacted Kelly, the firm's CFO, to discuss NFA's concerns. After this discussion, Kelly submitted an amended September 2011 1-FR with a revised ENC calculation showing ENC of \$1,098,294. Kelly said that the original September 2011 1-FR was incorrect because, in calculating the firm's liabilities to customers, he had excluded (rather than included) customers' unrealized losses on their open positions.
23. When NFA started the November 2011 exam, staff was particularly concerned with ensuring that FX Club had adopted new procedures to reform its deficient accounting reconciliation practices and had implemented the recommendations made by CSI.
24. As both NFA and CSI had previously noted, FX Club did not perform rudimentary daily account reconciliations between its equity run system – which was under the control of a third-party service provider located in Malaysia called Rumus – and its back-office system. Rather than perform a daily reconciliation, FX Club simply "trued-up" numbers into its general ledger at the end of each month to reconcile the differing month-end balances in these two systems. Therefore, FX Club could not accurately calculate its daily customer liability balance. Moreover, since FX Club did not accurately calculate its liability to customers, the firm could not adequately manage its counterparty market risk since it manages risk via a dealing desk rather than automatically offsetting all customer positions.
25. Despite FX Club's earlier commitment to reforming its accounting reconciliation practices, NFA discovered during the November 2011 audit that these practices

were materially unchanged. The firm could not immediately generate an in-house equity run, despite the fact that an equity run is one of the most basic and crucial reports that any FDM should have readily accessible. At certain times, it took the firm as long as four business days to produce this report. At other times, the firm provided an equity run that used Russian and Chinese characters and/or contained a number of blank data fields which omitted material customer information (i.e., client names).

26. When asked by NFA why it took FX Club so long to produce an adequate equity run, the firm's Chief Dealer, Berzitskiy, and the firm's CFO, Kelly, said no one at FX Club had the ability to generate equity runs as the firm relied on Rumus – which, as alleged above, is located in Malaysia – to do its equity runs. In addition, Rumus also handled FX Club's technical issues (e.g., system outages) and non-technical issues (e.g., customer support including customer complaints). This arrangement was contrary to FX Club's Automated Order Routing Systems procedures which indicated that FX Club was solely responsible for technical and non-technical functions.
27. Even though FX Club was almost entirely reliant on Rumus for certain key functions, FX Club had no formal operating agreements with Rumus and no one from FX Club was present at Rumus's facility in Malaysia to monitor its activity. Moreover, FX Club did not have any procedures that outlined how FX Club should monitor Rumus's activities nor any documentation to evidence that Rumus was fulfilling its compliance obligations to FX Club (e.g., maintaining customer inquiry logs and/or trade monitoring logs).

28. Although NFA had repeatedly warned FX Club that it needed to 1) immediately implement the recommendations identified in CSI's report; and 2) develop a reconciliation process between the firm's accounting system and its back office system so that it could determine its daily customer liability balance on an accurate and timely basis without relying on "trued-up" numbers, FX Club made no meaningful progress with respect to either directive. Therefore, as alleged above, by letter dated May 31, 2012, NFA told FX Club that it was required to immediately implement certain remedial measures and that, if it failed to do so, NFA would issue a Member Responsibility Action against the firm.
29. By reason of the foregoing acts and omissions, FX Club is charged with violations of NFA Compliance Rule 2-10 and NFA Financial Requirements Section 15(a).

## COUNT II

### **VIOLATION OF NFA COMPLIANCE RULE 2-9(c): FAILING TO MAINTAIN AN ADEQUATE ANTI-MONEY LAUNDERING PROGRAM.**

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30. The allegations set forth in paragraphs 1 through 11 and 14 are realleged as paragraph 30.
31. During NFA's November 2011 examination, NFA reviewed FX Club's AML program to determine if the firm was conducting on-going monitoring of its customers to ensure that none of them was listed with or resided in a country identified by either the Office of Foreign Assets Control (OFAC) or the Financial Crimes Enforcement Network (FinCEN). However, once an account was opened, FX Club performed no regular or periodic reviews of its customers to see if any were on the lists provided by OFAC and FinCEN. This lack of on-going monitoring was also cited as a deficiency in the firm's September 2011

independent AML audit, and although FX Club indicated that this deficiency would be corrected, it failed to correct such deficiency.

32. FX Club's AML procedures also stated that the firm would conduct on-going due diligence with respect to customer activity to ensure that customers who were high-risk were identified as such. However, there were at least two instances in which customers engaged in behavior identified by the firm's own procedures as high-risk, yet FX Club did nothing to investigate. For example, one customer had a reported net worth and annual income of \$25,000 - \$50,000 but made deposits totaling \$292,000 and withdrawals of \$6,000. Another customer was allowed to open an account despite having been the subject of a public action by the Securities and Exchange Commission (SEC) for fraud just three months earlier. FX Club made no inquiry of these two customers to determine, in the case of the one customer, where the customer obtained the money to make deposits far exceeding the customer's stated income and net worth and, in the case of the other customer, what the facts and circumstances were underlying the SEC action.
33. In addition, FX Club failed to file Currency Transaction Reports for customers who made single sum cash deposits exceeding \$10,000 and – prior to April 2011 – failed to keep any record of these cash transactions. Finally, the firm also failed to ensure that four of its employees received AML training within the required twelve-month period.
34. By reason of the foregoing acts and omissions, FX Club is charged with violations of NFA Compliance Rule 2-9(c).

### COUNT III

#### **VIOLATION OF NFA COMPLIANCE RULES 2-48(a) AND (b) AND FINANCIAL REQUIREMENTS SECTIONS 10 AND 13(b): FAILING TO FILE TIMELY AND ACCURATE TRADE REPORTS.**

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35. The allegations set forth in paragraphs 1 through 11 and 15 through 17 are realleged as paragraph 35.
36. As an NFA Member FCM, FX Club is obligated to comply with NFA's Financial Requirements, which includes filing required financial reports in a timely manner. Yet, FX Club failed to timely file two monthly 1-FR forms.
37. As an NFA Member FDM, FX Club is also required to file daily electronic reports showing liabilities to customers and any other financial or operational information required by NFA. However, FX Club failed to file, on at least ten separate occasions, timely daily electronic reports showing liabilities to customers.
38. FX Club is also obligated to file true and complete daily trade data reports (trade reports) with NFA in the format prescribed by NFA. However, FX Club's trade reports for January through June 2012 failed to meet these requirements in that the data in the trade reports was not properly formatted in either its Manager or Concordance file submissions and incomplete data was provided regarding individuals and entities that exercised power of attorney over customer accounts. On several occasions, NFA provided guidance to the firm as to how these submissions could be corrected; however, FX Club failed to make the necessary changes to its systems so that it could submit correct and complete data.

39. By reason of the foregoing acts and omissions, FX Club is charged with violations of NFA Financial Requirements Sections 10 and 13(b) and NFA Compliance Rules 2-48(a) and (b).

**COUNT IV**

**VIOLATION OF NFA COMPLIANCE RULE 2-36(g): FAILING TO PRE-SUBMIT PROMOTIONAL MATERIAL TO NFA FOR PRE-APPROVAL PRIOR TO FIRST USE.**

40. The allegations set forth in paragraphs 1 through 11 and 18 are realleged as paragraph 40.
41. In May 2011, FX Club became subject to NFA's Enhanced Supervisory Requirements (ESR) because two of its five APs had been employed by firms subject to a prior disciplinary action. As a consequence, FX Club was required to submit all of its promotional material to NFA for pre-approval prior to first use.
42. During NFA's November 2011 examination, NFA found that from July through September 2011, FX Club failed to submit 21 YouTube promotional videos to NFA for pre-approval, and also failed to submit daily promotional webinars to NFA at least ten days prior to first use.
43. As a result, NFA sent FX Club a notice on October 21, 2011 advising the firm that NFA had found instances where the firm had failed to submit promotional material to NFA for pre-approval. The notice further reminded FX Club that it was subject to NFA's ESR and, therefore, was required to submit all promotional material to NFA for pre-approval prior to first use, and that continued failure on the part of the firm to comply with NFA's ESR could result in disciplinary action.
44. Despite NFA's October 21, 2011 notice, FX Club failed to submit several Facebook promotional postings to NFA for pre-approval in May and June 2012.

45. By reason of the foregoing acts and omissions, FX Club is charged with violations of NFA Compliance Rule 2-36(g).

**COUNT V**

**VIOLATION OF NFA COMPLIANCE RULE 2-36(e): FAILING TO DILIGENTLY SUPERVISE FX CLUB'S OPERATIONS AND PERSONNEL.**

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46. The allegations set forth in paragraphs 1 through 11 and 19 through 45 are realleged as paragraph 46.
47. As previously alleged, Tatarnikov was the firm's CEO from July 2010 through March 19, 2012. As the firm's CEO, Tatarnikov had a duty to diligently supervise all activities of the firm, including its financial and operational activities. In addition, the firm's key officers (i.e., Berzitskiy and Kelly) all reported to Tatarnikov. As a consequence, Tatarnikov also had a duty to diligently supervise each of these key areas that Berzitskiy and Kelly operated.
48. However, FX Club and Tatarnikov failed to adequately supervise the firm's operations as evidenced by FX Club's numerous deficiencies as alleged above, i.e., FX Club's failure to maintain required books and records; have adequate internal financial controls; generate and produce timely and accurate equity runs, timely monthly financial statements, and daily forex filings; submit accurate and complete trade reports in the format prescribed by NFA; comply with AML requirements; and/or submit all promotional material to NFA prior to first use.
49. FX Club and its management also failed to supervise the firm's registration process as evidenced by the fact that the firm filed a registration application for the firm's new CEO, Michael Klena, which contained inaccurate work history for

Klena that the firm and Klena failed to review and correct before submitting Klena's registration application to NFA.

50. By reason of the foregoing acts and omissions, FX Club and Tatarnikov 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  
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 as a result of or in connection with the issuance of this Complaint, NFA may impose one or more of the following penalties:

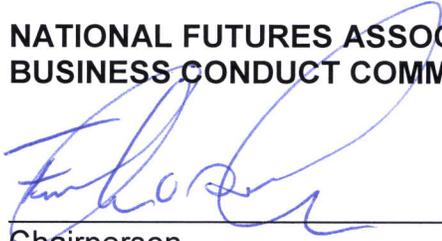
- (a) expulsion or suspension for a specified period from NFA membership;
- (b) bar or suspension for a specified period from association with an NFA Member;
- (c) censure or reprimand;
- (d) a monetary fine not to exceed \$250,000 for each violation found; and
- (e) order to cease and desist or any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

### **NATIONAL FUTURES ASSOCIATION BUSINESS CONDUCT COMMITTEE**

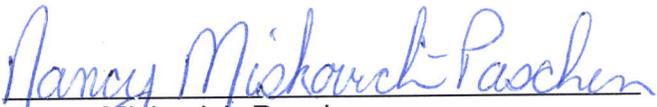
Dated: 10-25-12

By:   
Chairperson

**AFFIDAVIT OF SERVICE**

I, Nancy Miskovich-Paschen, on oath state that on October 25, 2012, I served a copy of the attached Complaint, by sending such copy by e-mail and overnight delivery, in an envelope addressed as follows to:

Felix Shipkevich, Esq.  
Shipkevich PLLC  
65 Broadway  
Suite 508  
New York, NY 10006  
E-mail: [fs@shipkevich.com](mailto:fs@shipkevich.com)

  
\_\_\_\_\_  
Nancy Miskovich-Paschen

Subscribed and sworn to before me  
on this 25th day of October 2012.

  
\_\_\_\_\_  
Notary Public

