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In the Matter of:

**NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING**

and

NFA Case No. 14-BCC-017

Respondents.

1. At all times relevant to this Complaint, FXDD was a futures commission merchant (FCM) and Forex Dealer Member (FDM) NFA Member. As such, FXDD was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.
2. At all times relevant to this Complaint, Botkier was a principal of FXDD, an associated person (AP) of the firm and an NFA Associate. As such, Botkier was

and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof. FXDD is liable for violations of NFA Requirements committed by Botkier in the course of his activities on behalf of the firm.

BACKGROUND

3. FXDD is located in New York City. FXDD became registered as an FCM and an NFA Member in December 2009, was approved as an FDM in September 2010 and registered as a Retail Foreign Exchange Dealer (RFED) in September 2012. In November 2013, FXDD was approved as a Swaps Firm and provisionally registered as a Swaps Dealer.
4. NFA last conducted a full exam of FXDD in August 2013, at which time FXDD had approximately \$27 million in customer liabilities and approximately 4,000 active customer accounts. While FXDD's principal business has been acting as the counterparty to customer accounts trading in off-exchange foreign currency (forex) transactions, the firm transferred its U.S. retail forex accounts to another FDM in May 2014 and moved its foreign customer accounts to FXDD's affiliate in Malta (FXDD Malta). In July, FXDD filed a request to withdraw as an FCM, FDM and RFED and applied to become an introducing broker (IB), which application is currently pending.
5. Botkier is the chief executive officer (CEO) and a principal of FXDD, and has been an AP of the firm and an NFA Associate since December 2012. Shawn Vulte Dilkes (Dilkes) is another principal of the firm and its chief technology officer (CTO) with responsibility for supervising the firm's trading platforms, but Dilkes is not an AP of the firm or an NFA Associate. Similarly, Michael Andrew O'Reilly (O'Reilly)

is a principal of the firm and its chief compliance officer (CCO), and Dragana Bijelic (Bijelic) is the firm's anti-money laundering (AML) compliance officer, but neither O'Reilly nor Bijelic is an AP of FXDD or an NFA Associate.

6. FXDD has been the subject of two prior BCC actions. In June 2012, this Committee charged FXDD with several violations of NFA Compliance Rule 2-36, including retaining gains derived from FXDD's asymmetrical price slippage practices; failing to observe high standards of commercial honor and just and equitable principles of trade; converting customers' funds received in connection with the customers' forex transactions; submitting misleading information to NFA; and failing to supervise. The firm was also charged with violating NFA Compliance Rule 2-9(c) for failing to implement an adequate AML program, and NFA Compliance Rule 2-10 for failing to maintain accurate financial books and records.
7. In October 2012, the BCC issued a second Complaint against FXDD, charging the firm with failing to adequately investigate suspicious activity in several customers' accounts and failing to conduct annual AML training, in violation of NFA Compliance Rule 2-9(c); and failing to adequately supervise its operations, in violation of NFA Compliance Rule 2-36.
8. The firm settled both of these Complaints in September 2013 by paying more than \$1.8 million in restitution to FXDD customers who experienced unfavorable price slippage in their accounts and paying a fine of more than \$1 million to NFA.
9. As mentioned earlier, NFA commenced an examination of FXDD in August 2013. Because of serious deficiencies identified in prior exams – some of which were the subject of the 2012 BCC cases – NFA conducted a detailed review of the firm's

overall operations to ensure FXDD had appropriately addressed prior exam findings. However, NFA found repeat deficiencies relating to the firm's AML program, its supervision of customer complaints and promotional material, and its liquidation of customer positions. NFA also noted inadequacies in other areas of FXDD's operations, including the late submission of financial statements. These findings evidence an overall lack of internal controls and inadequate supervision of the firm's operations by FXDD and Botkier.

APPLICABLE RULES

10. NFA Compliance Rule 2-9(c) and a related Interpretive Notice require an FCM Member to 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 (BSA), the implementing regulations promulgated thereunder by the Department of the Treasury and, as applicable, the Commodity Futures Trading Commission (CFTC). NFA Compliance Rule 2-9(c) states, in pertinent part, that a firm's AML program must establish and implement policies, procedures and internal controls reasonably designed to ensure compliance with the applicable provisions of the BSA, and designate an individual (or individuals) to implement and monitor the day-to-day operations and the program's internal controls.
11. The Interpretive Notice related to Compliance Rule 2-9(c) highlights the minimum standards that are part of an adequate AML program, provides additional guidance on satisfying the requirements of Compliance Rule 2-9(c), and discusses key components of the firm's policies, procedures and internal controls, which include detecting and reporting suspicious activity, adopting a customer identification

program, and providing education and training to appropriate personnel. In addition, the Interpretive Notice provides examples of suspicious transactions and "red flags" that could cause further investigation by a firm, identifies wire transfer activity as one area that firms should give heightened scrutiny, and includes detailed information about monitoring accounts for suspicious activity. The Notice also states that a firm's compliance program must require employees to notify identified firm personnel of any potential suspicious activity, and such personnel must evaluate the activity and decide whether it warrants reporting to the Financial Crimes Enforcement Network (FinCEN). For transactions occurring after May 18, 2004, an FCM must also file a Suspicious Activity Report for Securities and Futures (SAR) with FinCEN.

12. The Notice also requires an FCM to design its customer identification program to enable the firm to form a reasonable belief that it knows the true identity of each customer and to include risk-based procedures to verify the identity of each customer and the situations under which the firm will require additional verification based on the firm's risk assessment of a new account. In addition, FCM Members are required to provide training for all appropriate personnel at least every 12 months.
13. NFA Compliance Rule 2-36(b)(1) provides that no FDM or Associate of an FDM engaging in any forex transaction shall cheat, defraud or deceive, or attempt to cheat, defraud or deceive any other person.
14. 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.

15. NFA Compliance Rule 2-43(b) provides, in pertinent part, that an FDM may not carry offsetting positions in a customer account but must offset them on a first-in, first-out (FIFO) basis.
16. NFA Financial Requirements Section 11 provides, in pertinent part, that an FDM, for which NFA is the designated self-regulatory organization (DSRO), that is required to file any document with or give any notice to its DSRO under CFTC Regulations 5.12 [Financial reports of retail foreign exchange dealers] shall also file one copy of such document with NFA at its Chicago office no later than the date such document is due to be filed with the CFTC.

COUNT I

VIOLATIONS OF NFA COMPLIANCE RULE 2-9(c): FAILING TO IMPLEMENT AN ADEQUATE AML PROGRAM.

17. The allegations contained in paragraphs 1 and 3 through 12 are realleged as paragraph 17.
18. In accordance with the requirements of NFA Compliance Rule 2-9(c) and the related Interpretive Notice, FXDD developed an AML program, which was incorporated into the firm's AML Compliance Manual and reviewed by NFA as part of the 2013 exam of the firm.
19. Similar to the Interpretive Notice under NFA Compliance Rule 2-9(c), FXDD's AML Manual lists "red flags" to help firm personnel identify suspicious activity (e.g., a customer opens a number of accounts under one or more names and shortly thereafter attempts to transfer the funds to one account, a customer engages in

extensive wire activity where previously there had been no wire activity; and a customer makes a funds deposit followed by an immediate request that the money be wired out or transferred to a third party or to another firm without any apparent business purpose).

20. FXDD's AML Manual as of July 16, 2013 identified Bijelic as the firm's AML compliance officer and O'Reilly as the firm's CCO. The AML Manual stated the AML compliance officer, together with FXDD's CCO, are primarily responsible for implementing and monitoring the day-to-day operations and internal controls of the firm's AML program. The AML Manual also stated that firm employees will promptly report potentially suspicious or questionable activity so that the matter may be thoroughly investigated by the AML compliance officer, who is also responsible for filing all required SARs on behalf of FXDD.
21. NFA's 2013 exam focused on the firm's AML program and found that many of the accounts with AML problems that NFA had identified during the 2012 exam – including accounts that were cited in the October 2012 Complaint – continued to trade at FXDD, apparently without any further investigation or inquiry by FXDD personnel in response to the Complaint's allegations or the findings from NFA's 2012 exam. Suspicious activity also occurred in several accounts after the 2012 exam concluded, but FXDD failed to investigate or report the suspicious activity.
22. Customer #1, opened a joint account at FXDD in March 2013, engaged in suspicious deposit/withdrawal activity. From April 1 through June 26, 2013, Customer #1 made 15 deposits to the account via credit card transactions totaling \$125,000. During the same time, four withdrawals totaling more than \$95,000 were made from the account through wire transfers to a bank account. However,

these withdrawals conflicted with FXDD's AML procedures, which required that any funds received from a customer by credit card must be redeemed to the same credit card used to fund the account, unless the credit card return fails, in which case the firm will issue a check to the customer at the address on record with the firm. Almost three months passed before FXDD detected the inconsistent withdrawal activity in Customer #1's account and stopped issuing redemptions to the customer through wire transfers.

23. Customer #2, a limited liability company (LLC), also engaged in suspicious deposit activity. Customer #2 opened its account in May 2009, even though the application form on file with FXDD was completed for the individual who supposedly owns and manages the LLC. Minimal trading occurred in the account from August 2009 through May 2010, at which time the account became inactive. Approximately three years later, on May 29, 2013, the individual who owns/manages the LLC contacted FXDD requesting to close the original account and open a second account at the firm using a different IB. The next day, FXDD received a \$100,000 wire deposit for Customer #2, which FXDD initially deposited into the original account but then transferred the funds, including the existing account balance of about \$20, to a new account at the firm. Not only did FXDD accept an account application in 2009 for someone other than its actual customer, but the firm also did nothing in 2013 to ensure that its records contained accurate and current information about Customer #2, whose account had been dormant for almost three years. In addition, prior deposits to Customer #2's account during 2009 and 2010 totaled \$5,000. Even so, the deposit of \$100,000 in May 2013 –

which far exceeded prior deposit activity in the account – did not raise any "red flags" or prompt the firm to inquire further.

24. FXDD also failed to detect or question the sudden, unexplained deposit/withdrawal activity, combined with no trading, by Customer #3, even though FXDD's AML program identified unexplained wires/deposits as an indication of suspicious activity. Specifically, Customer #3 opened an account at FXDD in March 2011. Although trading occurred in the account from March 2011 through early 2012, Customer #3 withdrew the remaining account balance of about \$877 from his account in May 2012. The account remained inactive from May 2012 until June 5, 2013, when the customer made a credit card deposit of \$1,000. On June 19 and 21, the customer made additional deposits of \$10,000 and \$3,000, respectively. On July 3, 2013, the customer redeemed all three deposits without conducting any trading in the account.
25. In addition, FXDD failed to follow its procedures for customers who reside in countries publicly identified by the Financial Action Task Force (FATF) and classify the customers' accounts as high-risk. Specifically, a list of the accounts that FXDD had flagged as high risk only included accounts with unusual deposit and/or redemption activity and did not contain the accounts of any customers who resided in high-risk countries. However, FXDD's June 30, 2013 equity run included about 20 accounts that were funded at the time for customers from countries then identified by FATF as high-risk or non-cooperative (e.g., Indonesia, Kenya, Turkey, Vietnam and Yemen). In addition, the records for one FXDD customer who was a citizen of Turkey included an alert from the third party who performs background checks for FXDD that specifically stated, "Please keep a watch on the [account] for

substantial [transactions] or large sums of money which may be moved through the account." Even with this blatant warning, FXDD did nothing to flag the account for additional monitoring.

26. Furthermore, O'Reilly and Bijelic could not explain to NFA why the accounts of customers who resided in countries identified as high-risk or non-cooperative were not flagged for further monitoring. Instead, they responded to NFA's concerns by disabling the accounts that NFA had identified, rather than making any effort to review them further.
27. FXDD's AML procedures also state that "customers who have been in prison, indicted, convicted of a felony, engaged in fraud and/or crimes of moral turpitude" shall be red-flagged as high-risk. However, FXDD failed to flag the account of Customer #4 as high-risk or for additional monitoring even though the managing member of Customer #4 was sentenced in 2005 to 18 months in prison for his role in a fraudulent conspiracy involving the sale of rebuilt wrecked cars. The account application for Customer #4 was completed in June 2012, and FXDD did not approve the account initially, based on information received from the third party that performs credit and background checks for the firm. However, a few days later, FXDD approved the account of Customer #4 based on an undocumented conversation that FXDD personnel had with a representative of Customer #4, yet failed to flag this account as high-risk or for additional monitoring even though FXDD personnel were aware of the managing member's criminal history. Further, when NFA questioned the firm about not monitoring the account, FXDD personnel indicated they did not feel it was necessary.

28. FXDD also apparently failed to collect relevant information to ascertain the identity of its potential customers, contrary to the firm's Customer Identification Program (CIP). To illustrate, in reviewing account opening paperwork for a sample of customers, NFA found instances where the paperwork collected by FXDD had questionable answers and inconsistencies that FXDD either ignored or overlooked.
29. The April 2013 application form for Customer #5 listed the individual's annual income and net worth as \$500,000 to \$1,000,000 and her occupation as the manager of a "property investment" company, which had also opened a separate account with FXDD a few days earlier. During the account opening process, FXDD obtained a bank statement cover letter for Customer #5 and a copy of her driver's license, among other identification documents. However, the first name of Customer #5 on the bank letter was spelled differently from her name on her driver's license and other documents (e.g., medical bill). In addition, the apartment number on the bank letter had been crossed out and replaced with another number, which differed from the apartment number listed on her license. The background check report that FXDD received from the third-party provider also listed an alias for Customer #5, which was completely different from her current name. FXDD did nothing to follow-up on these inconsistencies.
30. NFA also reviewed the account opening documentation for the "property investment" company that Customer #5 managed and noticed that Customer #5's husband owned the company. The application form also listed the same e-mail address as Customer #5, while the background report for the husband of

Customer #5 disclosed an alias. However, none of this information caused FXDD to inquire further.

31. Even a subpoena from the State of Florida Office of Financial Regulation for documents relating to the company and the husband of Customer #5 was not enough to prompt FXDD to limit trading or check deposit and withdrawal activity in Customer #5's account. On July 17, 2014, the husband of Customer #5 was arrested by the Florida Department of Law Enforcement on charges of racketeering, securities fraud, grand theft and money-laundering in connection with an alleged Ponzi scheme that stole millions from Haitian immigrants.
32. The CIP section of FXDD's AML procedures also indicates that FXDD will require copies of a passport and utility bill to verify the identity of any customer who is not a U.S. citizen. FXDD's CIP requirements further state that, "FXDD will not accept any accounts without full customer identity verification." However, FXDD failed to follow its CIP requirements for at least two new customers who were not citizens of the U.S.
33. Specifically, the application form for Customer #6 stated the individual was a citizen of Indonesia. However, FXDD personnel only obtained a copy of the customer's Ohio driver's license to verify his identity and did not require the customer to provide a copy of his passport and a utility bill before opening the account. Additionally, FXDD personnel completely missed or ignored the fact that Customer #6's application stated he was a citizen of Indonesia – a country identified by FATF as high-risk – since there is no evidence that the customer was subjected to any extra scrutiny before (or after) FXDD opened the account.

34. Similarly, the account application for Customer #7 indicated the individual was a citizen of Ukraine and listed "passport" as the type of identification (ID) provided to FXDD. Although the customer provided FXDD with a copy of his New York driver's license, the firm never obtained copies of the customer's passport and a utility bill, even though Customer #7 is not a U.S. citizen. FXDD also apparently failed to notice the inaccurate ID information on the application form since the individual actually provided FXDD with a copy of his driver's license, not his passport.
35. Additionally, FXDD was not in full compliance with the annual training requirements of its AML program, which called for training every 12 months for all employees who worked in areas susceptible to money laundering. Of the 100 employees reviewed, 45 failed to complete their AML training within 12 months. While many of the employees completed their training within a few days after the 12-month deadline, four of them were approximately six months late in finishing their training.
36. By reason of the foregoing acts and omissions, FXDD is charged with violations of NFA Compliance Rule 2-9(c).

COUNT II

VIOLATIONS OF NFA COMPLIANCE RULE 2-43(b): FAILING TO OFFSET TRANSACTIONS IN THE ACCOUNTS OF CERTAIN CUSTOMERS IN A FAIR AND ACCEPTABLE METHOD.

37. The allegations contained in paragraphs 1, 3 through 9 and 15 are realleged as paragraph 37.
38. The vast majority of FXDD customers trade on the MetaTrader 4 platform (MT4), which is a third-party system that FXDD leases. Standing on its own, the MT4

platform is not compliant with all NFA Requirements. Therefore, FXDD built a "bridge" to connect the MT4 platform to FXDD's back-end system, which FXDD uses to provide customer statements that supposedly reflect the customers' true account balances and allow the firm to process customer orders on a FIFO basis, as required by NFA's Compliance Rule 2-43(b).

39. NFA's 2012 exam report cited FXDD for misleading its customers about the true value of their accounts and for not offsetting positions on a FIFO basis since the firm was instructing its customers to rely on information from FXDD's back-end system, even though the firm was actually liquidating customers' positions based off the positions and account balances reported according to the MT4 platform. In December 2012, FXDD responded to NFA that the firm's development team was currently working on system modifications to base liquidations off FXDD's back-end system and indicated the firm had placed a "high priority" on the project. FXDD later informed NFA that the system had been corrected in May 2013. Therefore, during the 2013 annual exam, NFA confirmed that liquidations on the MT4 platform were occurring off the back-end system and that balances were being correctly reported to customers.
40. Even though FXDD had corrected the issue on the MT4 platform, the firm failed to ensure that all of its other platforms correctly reported true account balances for customers and that the firm was offsetting positions on a FIFO basis. Specifically, the same problem NFA had identified with the MT4 platform was also occurring on the J. Forex platform offered by FXDD, where FXDD was basing liquidations off the front-end of the system rather than off the back-end of the system. When NFA discussed the matter with CCO O'Reilly and CTO Dilkes, they responded by

saying the problem must have been an oversight on their part and by pointing out that J. Forex, like MT4, is operated by a third party.

41. This finding evidences the inability of FXDD and its senior personnel to ensure that deficiencies noted in NFA exams are completely remedied to ensure the firm is in full compliance with NFA Regulations. In addition, the response of O'Reilly and Dilkes ignores the firm's obligations under NFA's Interpretive Notice to Compliance Rule 2-36(e) entitled "Supervision of the Use of Electronic Trading Systems" which requires Members to conduct periodic reviews of any electronic trading system (ETS) it uses to, among other things, ensure the system protects the integrity of the trades placed on it and executes customer forex orders in a fair manner. The ETS Interpretive Notice also requires Members to ensure that any promotional or other material they distribute regarding the ETS accurately and completely discusses the system's function and operation.
42. By reason of the foregoing acts and omissions, FXDD is charged with violations of NFA Compliance Rule 2-43(b).

COUNT III

VIOLATIONS OF NFA FINANCIAL REQUIREMENTS SECTION 11: FAILING TO FILE CERTIFIED FINANCIAL STATEMENTS IN A TIMELY MANNER.

43. The allegations contained in paragraphs 1, 3 through 9 and 16 are realleged as paragraph 43.
44. FXDD is required to file an audited financial statement (AFS) within 90 days after its fiscal year ends on December 31. However, the firm filed both its 2012 and 2013 AFS after the required time.

45. For the 2012 AFS, NFA received three requests from FXDD between March 21 and April 11 for an extension of time to file its AFS. NFA denied all three requests. FXDD finally submitted its AFS on April 25, 2013, which caused FXDD to incur late fees of \$4,600.
46. Despite being fully aware of the deadline for filing its AFS – and NFA's inclination to deny extension requests – FXDD again asked for an extension of time to file its 2013 AFS, which NFA denied. Even though its 2013 AFS was due on March 31, 2014, FXDD did not submit the statement until July 11 and incurred late fees of \$71,000.
47. By reason of the foregoing acts and omissions, FXDD is charged with violations of NFA Financial Requirements Section 11.

COUNT IV

VIOLATION OF NFA COMPLIANCE RULE 2-36(b)(1): USING MISLEADING PROMOTIONAL MATERIAL TO SOLICIT CUSTOMERS.

48. The allegations contained in paragraphs 1, 3 through 9 and 13 are realleged as paragraph 48.
49. NFA cited FXDD in the 2012 exam for using misleading promotional material and sales solicitations because the firm and its personnel failed to distinguish between FXDD and its foreign affiliate, FXDD Malta. Even though FXDD indicated the promotional material had been corrected, NFA's 2013 exam revealed continuing problems in this area, likely resulting from the firm's failure to implement adequate procedures to ensure that any new or revised promotional material accurately portray FXDD and FXDD Malta as two distinct companies that are subject to different regulatory structures and requirements.

50. Specifically, FXDD mainly uses online advertising to obtain new customers and its promotional material essentially consists of the firm's website (www.fxdd.com). However, FXDD's promotional materials continued to be misleading in terms of how they portrayed FXDD and its foreign affiliate, FXDD Malta. Both firms were marketed and promoted as one global brand, rather than as two distinct entities, which confused and misled customers as to whether they were trading with FXDD or FXDD Malta. Corporate and other firm brochures available on its website referenced FXDD as being regulated by both NFA and the Malta Financial Services Authority (MFSA) and portrayed FXDD and FXDD Malta as one entity and referenced combined statistics about the firms and awards won by them. Another FXDD website (www.fxddfrontier.com) stated the firm, FXDD Frontier, is regulated by NFA – even though the firm is a division of FXDD Malta – and an FXDD Malta account statement included a disclosure that referenced NFA.
51. Further adding to the confusion is the fact that several APs of FXDD also solicit customers on behalf of FXDD Malta, and customers are unsure whether they are trading with NFA's Member firm, FXDD, or FXDD Malta, especially if the customer has been talking to someone who works out of FXDD's U.S. office and is a registered AP of the firm and an NFA Associate.
52. By reason of the foregoing acts and omissions, FXDD is charged with violations of NFA Compliance Rule 2-36(b).

COUNT V

VIOLATION OF NFA COMPLIANCE RULE 2-36(e): FAILING TO ADEQUATELY SUPERVISE THE FIRM'S OPERATIONS AND ITS EMPLOYEES.

53. The allegations contained in paragraphs 1 through 9 and 14 are realleged as paragraph 53.
54. During annual exams of FXDD, NFA has identified multiple shortcomings and numerous deficiencies at the firm that have persisted for several years and evidence an overall lack of supervision at the firm. Many of the deficiencies continue to exist in significant areas of the firm's operations – including issues with its AML program and trading platforms – despite NFA having cited problems in those areas in prior exams and receiving the firm's representations that the issues would be corrected.
55. FXDD has obviously failed to implement any comprehensive changes and controls to completely correct the problems identified by NFA and to ensure similar mistakes are not repeated. Moreover, it appears that even the two 2012 BCC Complaints against the firm, which charged FXDD with violations in all of these areas and resulted in a sizeable fine of more than \$1 million to settle the cases, were not enough to serve as a significant deterrent against future similar violations by FXDD.
56. NFA's 2013 exam also revealed other repeat deficiencies. For example, the failure to supervise charge in the June 2012 BCC Complaint discussed the firm's failure to determine the nature of customer complaints and whether the firm was addressing them properly. In response, FXDD had represented that new

procedures were implemented regarding proper documentation of customer complaints.

57. However, the results of the 2013 exam make clear that FXDD has done very little to adequately address and correct its deficient system of monitoring, responding to and supervising customer complaints since FXDD apparently only evaluated customer complaints for completeness and documentation, but not for content or possible trends. In addition, many of the complaints were poorly recorded, with incomplete notations and explanations.
58. FXDD's Compliance Department also played a limited role in the complaint process, chiefly because the firm's procedures only required complaints to be escalated to compliance staff if an FXDD customer service or sales representative was unable to resolve the issue after involving the representative's supervisor or manager. From July 2012 to early August 2013, only 12 complaints were referred to FXDD's Compliance Department out of the more than 250 complaints the firm received during that period. Other complaints were not properly classified, including one complaint that was escalated to the Compliance Department – presumably because of its "severe" nature – even though the customer was simply asking for written confirmation of a redemption request from 2010 that he had forgotten about.
59. In addition, documentation for one customer complaint consisted of an e-mail sent by Michael Zimkind (Zimkind), who happens to be an AP and principal of the firm and its Director of Institutional Sales, to Dilkes and another FXDD principal. The internal e-mail apparently concerned a \$12,500 trade adjustment for a customer,

in which Zimkind stated that the firm should have the customer, "...of course, confirm with us via email that he will not be contacting the NFA."

60. FXDD's indifference to the seriousness of NFA's exam findings is further illustrated in the way the firm filled key positions at the company within the last year. Specifically, the June and October 2012 BCC Complaints both named as a respondent James E. Green (Green), who was then FXDD's CCO and its AML compliance officer. Shortly before the issuance of the October 2012 Complaint, FXDD removed Green from his positions at the firm and appointed O'Reilly as CCO and Bijelic as the AML compliance officer. O'Reilly previously served as the firm's corporate counsel prior to his appointment as CCO, and Bijelic worked as Green's assistant in the Compliance Department and performed certain AML responsibilities at the firm. Despite their appointments to these positions, numerous compliance issues continued at the firm.
61. In addition, FXDD's Chief Financial Officer (CFO) left the firm in December 2013. Instead of making a legitimate attempt to hire a qualified CFO, the firm again relied on its existing internal staff to fulfill not only the CFO responsibilities, but to also perform all of their other job duties. Botkier also stepped in to handle certain of the CFO responsibilities, but a daily financial filing reviewed and submitted by him on at least one occasion contained significant errors, and the firm's late 2013 AFS filing raises questions about his qualifications to adequately fulfill these responsibilities.
62. Finally, as FXDD's CEO, Botkier is responsible for ensuring that the firm is in compliance with all NFA Requirements. Botkier also is responsible for overseeing the firm's operations and employees, which includes supervising O'Reilly, Dilkes,

Bijelic and the firm's financial operations team. However, Botkier's supervisory efforts were seriously lacking, as evidenced by his failure to make sure that FXDD has qualified and adequate staff in place and devotes the resources needed to ensure that the firm has sufficient procedures and internal controls in place to manage the firm's operations. Moreover, Botkier's continued failure to ensure that issues with FXDD's trading systems, customer complaints and promotional material are completely and properly addressed indicate his apparent indifference to protecting the interests of the firm's customers.

63. By reason of the foregoing acts and omissions, FXDD and Botkier 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
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 in connection with the issuance of this Complaint, NFA may impose one or more of the following penalties:

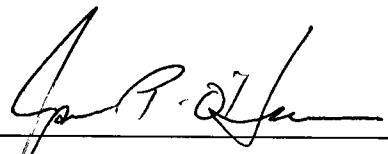
- (a) expulsion or suspension for a specified period from NFA membership;
- (b) bar or suspension for a specified period from association with an NFA Member;
- (c) censure or reprimand;
- (d) a monetary fine not to exceed \$250,000 for each violation found; and
- (e) order to cease and desist or any 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 AP 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: 9/3/14

By: 
Chairperson

/cxc/Complaints/FXDirectDealer_Botkier Complaint 2014