

**NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE**

In the Matter of:)
)
FOREX CAPITAL MARKETS LLC) NFA Case No. 05-BCC-025
(NFA ID #308179),)
)
Respondent.)

COMPLAINT

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association ("NFA"), and having found reason to believe that NFA Requirements are being, have been or are about to be violated and that the matter should be adjudicated, NFA's Business Conduct Committee ("Committee") issues this Complaint against Forex Capital Markets LLC ("FXCM").

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, FXCM was a futures commission merchant ("FCM"), forex dealer, NFA Member located in New York, New York.

BACKGROUND

2. FXCM has been registered as an FCM and NFA Member since June 2001. Its principal business is the handling of customer accounts trading in off-exchange foreign currency futures and foreign currency options transactions ("Forex").

3. NFA commenced an audit of FXCM in August 2004. At the time of the audit, FXCM had approximately 34,000 retail customers and 63 institutional clients. NFA issued an audit report to FXCM in April 2005 which cited the firm for a number of deficiencies, including failure to perform due diligence with respect to its non-NFA Member introducing sales agents and the use of deficient promotional material.

APPLICABLE RULES

4. NFA Compliance Rule 2-36(b)(1) provides that no Forex Dealer Member or Associate of a Forex Dealer Member engaging in any foreign currency futures or options transaction shall cheat, defraud or deceive, or attempt to cheat, defraud or deceive any other person.
5. NFA Compliance Rule 2-36(d) provides that a Forex Dealer Member is subject to discipline for the activities of its non-NFA Member introducing sales agents.

COUNT I

VIOLATION OF NFA COMPLIANCE RULE 2-36(b)(1): USING DEFICIENT PROMOTIONAL MATERIAL.

6. The allegations contained in paragraphs 1 through 5 are realleged as paragraph 6.
7. As part of its audit of FXCM, NFA reviewed the firm's promotional material, including e-mails to customers, a marketing brochure, websites maintained by non-NFA Member introducing sales agents which solicited on behalf of FXCM, two of the firm's own websites, magazine advertisements, and live internet chat room sessions.

8. All of the promotional material included claims of slippage-free execution, guaranteed fills on stop-loss and limit orders, and price guarantees on market orders. However, FXCM did not provide “slippage-free” trading to its customers, nor was it always able to honor stop and limit orders, as evidenced by the events of August 6, 2004, when – due to the market volatility on that date – FXCM was unable to fill all of its customers’ stop and limit orders and, at the end of the day, changed the trade prices of trades that had been confirmed to customers earlier in the day at different prices.
9. Thus, as of August 6, 2004, if not before, FXCM was aware that it could not guarantee customers “slippage-free execution.” On August 18, 2004, FXCM sent a letter to existing clients advising them that during periods of extreme volatility, the firm could not provide “guarantees for stop-loss, limit, and entry orders.” Nevertheless, FXCM continued to make some claims of “slippage-free execution” in internet chat room sessions, which NFA monitored between August 6 and August 13, 2004 and, also, in a September 24, 2004 mass e-mail. Moreover, the firm still made claims of “slippage-free trading” in certain promotional material used a year later, in August and September 2005.
10. FXCM’s promotional material also included numerous claims of “zero commissions” and “commission free trading.” These claims implied that FXCM did not make any money on a trade when, in fact, it makes money on the mark-up or pip spread on trades, which was not clearly disclosed in the promotional material.

11. In addition, there were claims made during the chat sessions that “FXCM holds customer funds in an FDIC insured account that is segregated from all of FXCM’s operational funds” and “as a result, clients’ funds are safe at all times.” Contrary to the implication of these statements, customer funds of Forex customers are not legally required to be segregated and may be subject to claims of a Forex firm’s creditors.
12. Throughout the audit, as well as in the audit report issued to FXCM in April 2005 and in subsequent meetings with firm personnel, NFA admonished the firm against making claims touting “slippage-free trading,” “zero commissions,” and the safety of customer funds. Yet, FXCM and/or certain of its non-NFA member introducing sales agents have continued to make some claims of this type in their promotional material.
13. By reason of the foregoing acts and omissions, FXCM is charged with violations of NFA Compliance Rule 2-36(b)(1).

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
200 West Madison Street
Suite 1600
Chicago, Illinois 60606-3447
Attn: Legal Department-Docketing

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, as that term is defined in CFTC Regulation 1.63.

**NATIONAL FUTURES ASSOCIATION
BUSINESS CONDUCT COMMITTEE**

Dated: 11-28-05

By: 
Chairperson

m/rvh/FXCM Complaint (Final, 11-25-05)

AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on November 28, 2005, I served a copy of the attached Complaint, by placing such copy in the United States mail, first-class delivery, and by overnight mail, in envelopes addressed as follows:

Forex Capital Markets LLC
Financial Square
32 Old Slip
10th Floor
New York, NY 10005
Attn: James Sanders
Compliance Officer

and also by messenger delivery to:

Arthur W. Hahn
Katten Muchin Zavis Rosenman
525 W. Monroe Street
Suite 1600
Chicago, IL 60661


Nancy Miskovich-Paschen

Subscribed and sworn to before me
on this 28th day of November 2005.


Notary Public



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