

UNITED STATES OF AMERICA
Before the
U.S. COMMODITY FUTURES TRADING COMMISSION

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U.S. COMMODITY FUTURES TRADING COMMISSION

In the Matter of:)
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)

FX First, Inc.,)
5000 Birch Street, Suite 9600)
Newport Beach, CA 92660)

CFTC Docket No. SD 04-01

Registrant.)
_____)

NOTICE OF INTENT TO REVOKE REGISTRATION
PURSUANT TO SECTIONS 8a(3)(J) AND 8a(4) OF
THE COMMODITY EXCHANGE ACT, AS AMENDED

I.

BACKGROUND

The U.S. Commodity Futures Trading Commission (“Commission”) has received information from its staff which demonstrates, and the Commission’s Division of Enforcement (“Division”) alleges and is prepared to prove, that:

1. FX First, Inc. (“Registrant”) is a California corporation with its principal place of business located at 5000 Birch Street, Suite 9600, Newport Beach, CA 92660.
2. Since on or about June 26, 2003, Registrant has been a member of the National Futures Association (“NFA”) and has been registered as a futures commission merchant (“FCM”) pursuant to Sections 4d and 4f of the Commodity Exchange Act (“Act”), as amended, 7 U.S.C. §§ 6d and 6f (2001). FX First is in the business of trading retail, off-exchange foreign currency futures contracts.

A. NFA Member Responsibility Action

3. On September 11, 2003, the NFA issued a Member Responsibility Action (“MRA”) No. 03-MRA-003 to Registrant placing it on “liquidation only” status, effective immediately. The NFA deemed that the MRA was necessary to protect Registrant’s customers because Registrant failed to demonstrate that it met the requirements of NFA Financial Requirements Section 1 or that it was in compliance with all other NFA Financial Requirements.

4. Specifically, the NFA claimed that Registrant failed to maintain adjusted net capital, as defined in Section 1.17 of the Commission Regulations (“Regulations”), 17 C.F.R § 1.17 (2003), equal to or in excess of \$250,000. In Registrant’s Form 1-FR-FCM dated July 31, 2003, FX First claimed that the firm had current assets of \$2,860,863, adjusted net capital of \$278,623, and excess net capital of \$28,623. Based upon an audit conducted by the NFA on or about August 11, 2003, they determined that Registrant identified \$2,062,500 deposited in a bank account in Russia as current assets in its July 31, 2003 Form 1-FR-FCM. Registrant concedes that the \$2,062,500 on deposit in Russia is restricted from withdrawal or use because the Russian bank where the funds are maintained will only permit Registrant to withdraw the funds in limited amounts on a specified schedule.

5. Cash deposits are generally deemed to be current assets unless the deposits are subject to withdrawal restrictions. The Commission has stated in the Instruction Manual to Form 1-FR-FCM that cash in an account that is subject to a withdrawal restriction is to be reported as noncurrent. Under Commission Regulation 1.17 and the Instruction Manual, the Russian deposit was not a current asset as FX First needed a license from the Russian government to withdraw the funds, but had none. Further, Regulation 1.17(c)(2)(vi) provides that current assets, for net capital purposes, exclude all assets doubtful of collection or realization. Under this provision,

FX First should have reduced its current assets by the Russian deposit if it was not assured that it could recover the deposit.

6. Following the NFA audit, the NFA informed Registrant that the funds deposited in Russia must be reclassified as a non-current asset and that, as a result of the reclassification, Registrant was below its required minimum net capital requirement by \$2,033,877. The NFA required Registrant to transfer the shortfall to an account in a major money market in order to meet its minimum net capital requirement. Registrant failed to transfer funds as required and failed to demonstrate to the satisfaction of the NFA that it was in full compliance with NFA's capital requirements and other NFA financial requirements.

B. Amended MRA

7. On September 17, 2003, counsel for FX First advised the NFA that the firm had issued wire instructions on September 16, 2003 to the Russian bank to transfer the funds held there to an unrestricted account, but that the bank responded that it was unable to move the money as requested due to the lack of a special license from the Central Bank of Russia. Counsel stated that FX First could not predict when the license would be secured and that it could take days or weeks.

8. On September 19, 2003, Alexey Mironov, a principal of FX First, informed the NFA that FX First was going to request transfer of the funds from the Russian bank on September 22, 2003, and that the application for the appropriate license would be submitted at that time. However, on September 23, 2003, William Whyte, FX First's president, informed the NFA that the application for the required special banking license had not yet been submitted, and would be submitted on September 24, 2003.

9. The NFA concluded that FX First continued to fail to be in full compliance with the NFA's adjusted net capital requirements and other NFA Financial Requirements.

10. On September 23, 2003, the NFA issued an Amended Member Responsibility Action ("Amended MRA") and suspended Registrant from NFA membership until it came into complete compliance with all NFA requirements, effective as of the close of business on September 26, 2003.

11. The amended MRA also noted that FX First was in violation of the original MRA that prohibited the disbursement of funds without NFA approval. FX First disbursed approximately \$28,994 as commission payments to agents who solicited customers on behalf of FX First.

12. Pursuant to Section 8a(3)(J) of the Act, 7 U.S.C. § 12a(3)(J), the Commission may refuse to register an entity that has had its NFA membership suspended. Furthermore, Section 8a(4) of the Act, 7 U.S.C. § 12a(4), provides that the Commission may suspend, revoke or restrict the registration of a registered entity if cause exists for a refusal of registration pursuant to Section 8a(3). The facts set forth in paragraphs 1 through 11 above constitute a valid basis for the Commission to disqualify FX First from registration.

II.

PUBLIC PROCEEDING

Pursuant to Regulation 3.60(a), 17 C.F.R. § 3.60(a) (2003), Registrant is hereby notified that a public proceeding shall be conducted in accordance with the provisions of Regulation 3.60, 17 C.F.R. § 3.60, on the following questions:

13. Whether Registrant is subject to statutory disqualification from registration under Section 8a(3)(J) and (4) of the Act, as set forth in Section I, above; and

14. If the answer to the question set forth in Paragraph 13 is affirmative, whether the registration of Registrant as a futures commission merchant should be suspended, or restricted.

Such proceeding shall be held before an Administrative Law Judge, in accordance with Regulation 3.60, 17 C.F.R. § 3.60, and all post-hearing procedures shall be conducted pursuant to Regulation 3.60(i)-(j), 17 C.F.R. § 3.60(i)-(j), subject to the expedited procedures set forth in Section III below.

III.

COMMISSION FINDINGS

Upon consideration of the information received from its staff and of the allegations of the Division of Enforcement contained in paragraphs 1 through 12 above, the Commission finds that:

- (A) The issues framed by paragraphs 1 through 12 of this Notice are clear, narrow and capable of speedy resolution;
- (B) The NFA has suspended Registrant's membership due to its inability to demonstrate that it is in compliance with the NFA's financial requirements;
- (C) The public is entitled to be protected against futures commission merchants that the NFA has suspended from NFA membership pursuant to an MRA;
- (D) The MRA does not revoke Registrant's registration as an FCM and does not preclude Registrant from resuming its retail foreign currency business in the future;
- (E) The Registrant and the public are entitled to a prompt decision regarding whether the Registrant's registration should be suspended or restricted; and
- (F) Based on (A) through (E) above, there is an interest in expediting the decision and other good cause for adopting expedited procedures.

WHEREAS the Commission has determined that no party to this proceeding will be prejudiced and that the ends of justice will be served by the adoption of expedited procedures in this matter,

IT IS ORDERED that pursuant to Regulations 3.60(k), 3.61 and 10.3, 17 C.F.R. §§ 3.60(k), 3.61 and 10.3, that the time limits set forth in Regulation 3.60, 17 C.F.R. 3.60 shall be shortened as follows:

(A) In accordance with the provisions of Regulation 3.60(a)(3), 17 C.F.R. § 3.60(a)(3), Registrant is entitled to file a response challenging the evidentiary bases of the statutory disqualification or show cause why, notwithstanding the accuracy of the allegation, its registration should not be revoked. Such response must be filed with the Hearing Clerk, Office of Hearings and Appeals, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and served upon Elizabeth Padgett, Trail Attorney, Division of Enforcement, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581 within seven (7) days after the date of service of this Notice upon Registrant in accordance with the provisions of Regulation 3.60(b), 17 C.F.R. § 3.60(b). If Registrant fails to file a timely response to this Notice, the allegations set forth herein shall be deemed to be true and the presiding officer may issue an Order of Default in accordance with the provisions of Regulation 3.60(a)(4), 17 C.F.R. § 3.60(a)(4).

(B) If, in the response, the Registrant states that it intends to make the showing referred to in Regulation 3.60(b)(2)(i), 17 C.F.R. § 3.60(b)(2)(i), it shall file and serve its further submission within seven (7) days after filing its initial response.

(C) Within seven (7) days after the latter of the date the Registrant serves a copy of its response (if no further submission is to be made in accordance with Regulation 3.60(b)(2)(ii)) or the date it serves a copy of its further submission, the Division shall file and serve its reply pursuant to Regulation 3.60(c), 17 C.F.R. § 3.60(c).

(D) Within seven (7) days after the Division of Enforcement files its reply, the Administrative Law Judge shall issue an order pursuant to Regulation 3.60(d), 17 C.F.R. 3.60(d). If a hearing is ordered pursuant to Regulation 3.60(d)(2), 17 C.F.R. § 3.60(d)(2), the Administrative Law Judge shall schedule the hearing within seven (7) days, and shall otherwise expedite all post hearing procedures to enable him to file his Initial Decision not later than thirty (30) days following the hearing.

(E) Appeals pursuant to Section 8a(4) and 6(c) of the Act, 7 U.S.C. §§ 12a(4), 9 and 15 (2001), must be initiated through the filing of a Notice of Appeal within seven (7) days of the service of the Initial Decision.

(F) The Defendant and the Division of Enforcement shall each serve and file an initial brief within seven (7) days of the service of any Notice of Appeal.

(G) The Defendant and the Division of Enforcement shall each serve and file its reply brief, if any, within seven (7) days of the service of the last initial brief.

(H) The Commission shall issue and serve its Opinion and Order within 60 days of the filing of the last reply brief.

(I) Pursuant to Rules 3.60(k), 3.61 and 10.3, the Administrative Law Judge, in the exercise of his discretion and for good cause shown, may extend or shorten the time limits prescribed above, or otherwise provided by the Regulations, upon his own motion or the motion of a party.

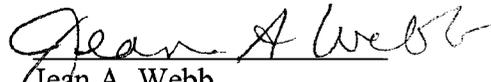
(J) Pursuant to Rules 3.60(k), 3.61 and 10.3, the Commission retains its discretion, for good cause shown, to extend or shorten the time limits prescribed above, or otherwise provided by the Regulations, upon its own motion or the motion of a party.

IV.

SERVICE

IT IS FURTHER ORDERED that the Hearing Clerk shall serve this Notice of Intent to Revoke Registration by registered or certified mail pursuant to Regulation 3.50, 17 C.F.R. § 3.50 (2003).

By the Commission.



Jean A. Webb
Secretary to the Commission
U.S. Commodity Futures Trading Commission

Dated: February 19, 2004