

III.

The Commission finds the following:

A. SUMMARY

During the Relevant Period Respondent failed to diligently supervise certain of its officers', employees', and agents' handling of accounts held at Respondent in the name of a fraudulent foreign currency exchange ("forex") pool, Revelation Forex Fund, LP ("RFF"), in violation of Regulation 166.3, 17 C.F.R. § 166.3 (2014). Specifically, Respondent's officers, employees, and agents failed to follow Respondent's compliance procedures by: (1) failing to provide adequate oversight of RFF's accounts; and (2) failing to notify appropriate authorities of certain activities associated with those accounts. Ultimately, RFF suffered a multi-million dollar loss as a result of the fraud perpetrated by the operators of RFF, Kevin G. White ("White"), RFF GP, LLC, and KGW Capital Management, LLC (collectively, the "White Entities").²

Further, during the Division of Enforcement's ("Division") investigation of RFF, Respondent failed to respond fully to a Commission document request in violation of Section 4g of the Act, 7 U.S.C. § 6g (2012), and Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31 and 1.35 (2014). Respondent's violation of Section 4g of the Act also violated a previous Commission order in violation of Section 6(c) of the Act, 7 U.S.C. § 9 (2012).

B. RESPONDENT

Forex Capital Markets, LLC is a registered futures commission merchant ("FCM") and Retail Foreign Exchange Dealer headquartered at 55 Water Street, 50th Floor, New York, NY.

C. FACTS

1. **The Commission Brought a Fraud Action Against White and the White Entities, and White Was Also Prosecuted Criminally**

On July 9, 2013, the Commission filed a complaint in the U.S. District Court for the Eastern District of Texas ("Complaint") that charged White and the White Entities with fraudulently soliciting approximately \$7.4 million from over 20 participants in a forex pooled investment vehicle and purported hedge fund, RFF, as well as misappropriating approximately \$1.7 million of pool participants' funds in violation of Sections 4b(a)(2)(A) and (C) and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6b(a)(2)(A) and (C) and 4o(1)(A) and (B) (2012). *CFTC v. RFF GP, LLC et al.*, No. 4:13-cv-382-RAS-DDB (E.D. Tex.). Specifically, the Complaint alleged that while acting as the controlling person of the White Entities, which operated the RFF pool, White misrepresented RFF's profitability through solicitations showing highly exaggerated annual returns and growth rates for RFF, when in actuality, RFF was unprofitable. The Complaint further alleged that White misrepresented his investment experience and

² The RFF accounts generated \$143,922.50 to Respondent in commissions and fees during the period in which Respondent serviced them – July 2011 through July 2013.

misappropriated funds for personal use.³ Subsequently, the U.S. Attorney for the Eastern District of Texas charged White with mail fraud. *United States v. White*, No. 4:13-cr-00258-RAS-DDB (E.D. Tex.). White pled guilty to the criminal charge and was subsequently sentenced to eight years in prison.⁴

2. Respondent Failed to Supervise Diligently The Handling of RFF's Accounts by Its Officers, Employees, and Agents

Respondent's compliance procedures require that Respondent "know all of its customers" and that its employees with the potential to do so identify, and promptly report to appropriate authorities, suspicious activities. During the Relevant Period, Respondent's Account Services Team ("Account Services Team"), which handled the RFF account, and Respondent's Compliance Department ("Compliance") failed to follow Respondent's compliance procedures by failing to identify certain suspicious activities by White and by failing to promptly report these activities to appropriate authorities.

White posted false claims of RFF's profitable performance on two websites that he controlled, www.revelationforex.com and www.kgwcapital.com (collectively, "websites"). During the Relevant Period, Compliance reviewed these websites on at least three occasions yet failed to identify or report White's false claims of RFF's profitable performance. Further, during the Relevant Period, Compliance failed to identify or report that White's operation of the websites on behalf of the White Entities violated their exemption from registering as a commodity pool operator, for which White previously filed a notice pursuant to Regulation 4.13(a)(3), 17 C.F.R. § 4.13(a)(3) (2014). Compliance failed to flag during the Relevant Period that while operating the RFF pool under this exemption, White was proscribed from advertising in connection with the pool by Regulation 4.13(a)(3), 17 C.F.R. § 4.13(a)(3) (2014).

During the Relevant Period, Compliance also became aware of statements posted in an online forex trading forum alleging that White made several fraudulent claims regarding RFF's profitability at a Las Vegas tradeshow event, the "MoneyShow." However, Compliance failed to investigate or report these statements to appropriate authorities.

Finally, during the Relevant Period, the Account Services Team and Compliance failed to identify or report that the margin requirements and net notional value of RFF's positions regularly far exceeded those permissible under White's claimed exemption for operating the RFF pool under Regulation 4.13(a)(3).

³ As the controlling person of the White Entities, White was responsible for the operation of the RFF pool and was Respondent's sole point of contact relative to RFF.

⁴ On March 30, 2015, the court in the Commission's case against White and the White Entities entered a Consent Order for permanent injunction against defendants. The Consent Order ordered them to pay a \$4,150,000 civil monetary penalty and \$3,365,888 in restitution. It also imposed permanent registration and trading bans.

3. Respondent's failure to respond fully to a Commission document request

On April 10, 2013, the Division sent a request for documents to Respondent pursuant to Section 4g of the Act ("Section 4g request") seeking, among other documents, all emails between Respondent and White. Respondent responded to the Section 4g request on April 12, 2013, and later supplemented its response. Certain emails between Respondent and White inadvertently were omitted from those responses. On February 11, 2014, Respondent produced all of the inadvertently omitted emails in response to a Division subpoena *duces tecum*.

4. Respondent's failure to comply with a previous Commission order

On October 3, 2011, the Commission ordered Respondent to cease and desist from violating Section 4g and Regulation 1.35 due to Respondent's previous failure to promptly produce documents in response to a Commission document request. *See In re Forex Capital Markets, LLC*, [2012-2013 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 32,658 (CFTC Oct. 3, 2011) ("October 3, 2011 Order"). As discussed above, Respondent subsequently failed to respond fully to a Commission document request.

IV. LEGAL DISCUSSION

A. Respondent Failed to Supervise Diligently Its Officers, Employees, and Agents Responsible for Handling RFF's Accounts

Regulation 166.3, 17 C.F.R. § 166.3 (2014), requires that every Commission registrant (except associated persons who have no supervisory duties) diligently supervise the handling by its officers, employees, and agents of all activities relating to its business as a registrant. Regulation 166.3 imposes upon registrants an affirmative duty to diligently supervise their employees and agents by establishing, implementing, and executing an adequate supervisory structure and compliance programs. In order to prove a violation of Regulation 166.3, the Commission must demonstrate that either: (1) the registrant's supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *See In re Murlas Commodities, Inc.*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,485, at 43,161 (CFTC Sept. 1, 1995); *In re Paragon Futures Assoc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,266, at 38,850 (CFTC Apr. 1, 1992). Evidence of violations that "should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly" is probative of a failure to supervise. *Paragon Futures*, Comm. Fut. L. Rep. (CCH) ¶ 25,266, at 38,850.

As discussed above, Respondent's lack of diligence in administering its supervisory system during the Relevant Period caused Respondent's violations of its compliance procedures. By such acts, Respondent violated Regulation 166.3, 17 C.F.R. § 166.3 (2014).

B. Respondent Failed to Respond Fully to a Commission Document Request

Section 4g of the Act, 7 U.S.C. § 6g (2012), requires FCMs, among other registrants, to maintain books and records pertaining to certain "transactions and positions in such form and manner and for such period as may be required by the Commission" and to "keep such books

and records open to inspection by any representative of the Commission.” The Regulations further elaborate that FCMs, among other registrants, must promptly provide required books and records to a Commission representative upon the representative’s request. Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31 and 1.35 (2014); *see also Forex Capital Markets, LLC*, Comm. Fut. L. Rep. (CCH) ¶ 32,658 (CFTC Oct. 3, 2011) (holding that Respondent violated Section 4g of the Act and Regulation 1.35 by failing to produce promptly certain records sought in 4g requests). A violation of these record-keeping regulations does not require scienter. *See In re DiPlacido*, [2003-2004 Transfer Binder] Comm. Fut. L. Rep. ¶ 29,866, at 56,590 (CFTC Sept. 14, 2004); *see also In re GNP Commodities Inc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360, at 39,214 (CFTC Aug. 11, 1992); *In re Buckwalter*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,995, at 37,687 (CFTC Jan. 25, 1991).

The facts surrounding Respondent’s production of documents show that Respondent violated Section 4g of the Act, 7 U.S.C. § 6g (2012), and Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31 and 1.35 (2014), because it did not respond fully to the Division’s Section 4g request. As discussed above, Respondent did not produce certain emails until February 11, 2014, after it was subpoenaed by the Division. Accordingly, Respondent failed to comply fully with the Division’s Section 4g request.

C. Respondent Violated the Commission’s October 3, 2011 Order by Failing to Respond Fully to a Commission Document Request

Pursuant to Section 6(c)(4) of the Act, 7 U.S.C. § 9(c)(4) (2012):

If the Commission has reason to believe that any person . . . is violating or has violated this subsection, or any other provision of this Act (including any rule, regulation, or order of the Commission promulgated in accordance with this subsection or any other provision of this Act), the Commission may serve upon the person a complaint.

The Commission has relied upon this section of the Act and its predecessor in instituting administrative procedures for violating a Commission order. *See In re Newedge USA, LLC*, [2012-2013 Transfer Binder] Comm. Fut. L. Rep. ¶ 33,206 (CFTC Jan. 9, 2012) (finding that an FCM’s violation of a Commission order constituted a violation of Section 6(c)) (citing *In re Grossfeld*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,726, at 40,367 (CFTC May 20, 1993) (affirming an administrative law judge’s determination that a failure to comply with a Commission order amounted to a violation of a Section 6(c)’s predecessor, Section 6(b)); *Lawrence v. CFTC*, 759 F.2d 767, 771 (9th Cir. 1985) (finding that a Respondent’s failure to pay a civil monetary penalty assessed by the Commission in an administrative enforcement action constituted a violation of a Commission order)); *see also CFTC v. Gibraltar Monetary Corp., Inc.*, No. 04-80132-CIV, 2006 WL 1789018, at *23 (S.D. Fla. May 30, 2006) (finding that Defendants’ violation of a Commission order in committing options fraud also violated Section 6(c)) (citing *Lawrence* 759 F.2d at 771).

The Commission’s October 3, 2011 Order directed Respondent to cease and desist from violating Section 4g of the Act and Regulation 1.35. Respondent violated the October 3, 2011

Order by subsequently violating Section 4g of the Act and Regulation 1.35 by failing to respond fully to a Commission document request. This failure constituted a violation of a Commission order and Section 6(c) of the Act, 7 U.S.C. § 9 (2012).

V. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent: (1) failed to adequately supervise its officers, employees, and agents in violation of Regulation 166.3, 17 C.F.R. § 166.3 (2014); (2) failed to respond accurately and completely to a Commission document request in violation of Section 4g of the Act, 7 U.S.C. § 6g (2012), and Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31 and 1.35 (2014); and (3) violated the October 3, 2011 Order and thereby violated Section 6(c) of the Act, 7 U.S.C. § 9 (2012).

VI. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 - 1. the filing and service of a complaint and notice of hearing;
 - 2. a hearing;
 - 3. all post-hearing procedures;
 - 4. judicial review by any court;
 - 5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 - 6. any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2014), relating to, or arising from, this proceeding;
 - 7. any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and

8. any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. makes findings by the Commission that Respondent violated Sections 4g and 6(c) of the Act, 7 U.S.C. §§ 6g, 9 (2012), and Regulations 1.31, 1.35, and 166.3, 17 C.F.R. §§ 1.31, 1.35, and 166.3 (2014);
 2. orders Respondent to cease and desist from violating Sections 4g and 6(c) of the Act, 7 U.S.C. §§ 6g, 9 (2012), and Regulations 1.31, 1.35, and 166.3, 17 C.F.R. §§ 1.31, 1.35, and 166.3 (2014);
 3. orders Respondent to pay a civil monetary penalty in the amount of seven hundred thousand dollars (\$700,000), within ten (10) days of the date of entry of this Order, plus post-judgment interest; and
 4. orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VII. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Sections 4g and 6(c) of the Act, 7 U.S.C. §§ 6g, 9 (2012), and Regulations 1.31, 1.35, and 166.3, 17 C.F.R. §§ 1.31, 1.35, and 166.3 (2014).
- B. Respondent shall pay a civil monetary penalty in the amount of seven hundred thousand dollars (\$700,000) ("CMP Obligation"), plus post-judgment interest, within ten (10) days of the date of entry of this Order. If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

Respondent shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made by other than electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies Respondent and the name and docket number of this proceeding. Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents, or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority and/or control understand and comply with this agreement.
 2. Respondent agrees to pay disgorgement in the amount of One Hundred Forty Three Thousand Nine Hundred and Twenty-Two Dollars and Fifty Cents (\$143,922.50) ("Disgorgement Obligation"), plus post-judgment interest, within ten (10) days of the date of entry of this Order. If the Disgorgement Obligation is not paid in full within ten days of the date of entry of this Order, then post-judgment interest shall accrue on the Disgorgement Obligation beginning on the date of entry of this Order and shall be determined using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961 (2012).

Respondent shall pay the Disgorgement Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made under cover letter that identifies Respondent, the name and docket number of this proceeding, and the name and docket number of the

proceeding in the U.S. District Court for the Eastern District of Texas (*CFTC v. RFF GP, LLC*, Case No. 4:13-cv-382) to:

Kelly M. Crawford, Esq. (as receiver and Assignee acting for the benefit of the KGW Receivership)
Scheef & Stone, LLP
Lincoln Plaza – Suite 2700
500 N. Akard Street
Dallas, Texas 75201

3. Respondent shall, within 30 calendar days of receipt of this notice, enlist the services of OnPoint Analytics, Inc., 2000 Powell Street, Suite 860, Emeryville, CA 94608, to serve as an independent, third-party compliance consultant (“Compliance Consultant”) to review and evaluate the supervisory issues raised herein. After consultation with Division staff, the Compliance Consultant shall, at a minimum:
 - a. Review and evaluate the effectiveness of Respondent’s existing internal controls and policies and procedures related to Respondent’s oversight of accounts of commodity pools; and
 - b. Prepare and issue to Respondent’s Board of Directors a confidential written report (“Confidential Report”) within 120 days of the Compliance Consultant’s hiring, which shall:
 - (1) Describe the scope and methodologies used by the Compliance Consultant in order to complete the review;
 - (2) Describe Respondent’s compliance with the review;
 - (3) Describe any findings with regard to the adequacy of Respondent’s existing internal control policies and procedures with respect to the issues raised herein; and
 - (4) Make recommendations, if any, with regard to matters assessed, setting forth why such recommendations are reasonably designed to improve Respondent’s internal controls and policies and procedures and risk management processes.
 - c. Respondent will ensure that any and all recommendations from the Compliance Consultant are implemented within sixty (60) calendar days after receiving the Confidential Report. If implementation cannot be accomplished within sixty days, a specific timetable and plan must be presented to the Division for its acceptance. Furthermore, with respect to the Compliance Consultant’s review of Respondent’s programs identified in Part VII.C.3.a. of this Order, the Compliance Consultant will, at the Division’s discretion, provide supplemental reports at one and two year

intervals following issuance of the Confidential Report, which will include the Compliance Consultant's methodology, information relied upon, and bases for the Compliance Consultant's findings.

- d. All recommendations that are implemented shall be employed by Respondent indefinitely from the time of the implementation, unless: (i) a change in the law would require that Respondent utilize and implement alternative methods for Respondent's internal controls, policies, and procedures; or (ii) a material change in the business of the entity causes the recommended action or procedure to become unduly burdensome, unachievable, impractical, or unreasonably costly. In the event either (i) or (ii) occurs, Respondent shall promptly notify the Division.
 - e. Respondent shall cooperate with the Compliance Consultant and the Compliance Consultant shall have the authority to take such reasonable steps, in its view, as may be necessary to be fully informed about the operations of Respondent within the scope of this review, including full access to all information the Compliance Consultant deems necessary to perform its duties.
 - f. The Commission's acceptance of Respondent's Offer and entry of this Order shall not be construed as its approval of any policy or practice reviewed by the Compliance Consultant and/or implemented based on the Compliance Consultant's recommendation.
 - g. A copy of the Confidential Report (and any attachments) shall be available for review upon its completion by Commission staff.
- D. The Compliance Consultant is not, and shall not be treated for any purpose, as an officer, employee, agent, or affiliate of Respondent, or the Commission. The Compliance Consultant shall not owe any fiduciary duties or other duties or obligations of any kind to Respondent or its directors, officers, employees, shareholders, bondholders, or creditors.
- E. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of partial payment of Respondent's Disgorgement Obligation or CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
- F. Change of Address/Phone: Until such time as Respondent satisfies in full its Disgorgement Obligation and CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten (10) calendar days of the change.

The provisions of this Order shall be effective on this date.

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 8, 2015