

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
KANSAS CITY DIVISION**

U.S. COMMODITY FUTURES TRADING	:	
COMMISSION,	:	
	:	CIVIL ACTION NO.:
Plaintiff,	:	
	:	COMPLAINT FOR PERMANENT
v.	:	INJUNCTION, CIVIL MONETARY
	:	PENALTY, AND OTHER EQUITABLE
INOVATRADE, INC.	:	RELIEF
	:	
Defendant.	:	
_____	:	

Plaintiff U.S. Commodity Futures Trading Commission (Commission or CFTC) alleges as follows:

**I. SUMMARY**

1. On October 18, 2010, the Commission enacted new regulations implementing certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§701-774, 124 Stat. 1376 (enacted July 21, 2010), and the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (CRA)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 1 *et seq.*, with respect to off-exchange foreign currency (forex) transactions. Pursuant to Section 2(c)(2)(C)(iii)(I)(aa) of the Commodity Exchange Act (Act), as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa), an entity must be registered if it wants to solicit or accept orders from a non-Eligible Contract Participant (ECP) in connection with forex transactions at a retail foreign exchange dealer (RFED) or futures commission merchant. Pursuant to CFTC Regulation (Regulation) 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i),

in connection with forex transactions, all RFEDs must be registered with the Commission as of October 18, 2010.

2. Beginning on October 18, 2010 and continuing to the present (the relevant period), InovaTrade, Inc. (InovaTrade or Defendant), while acting as an RFED, solicited orders from non-ECs in connection with forex transactions without registering with the Commission in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa), and Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i).

3. By virtue of this conduct and the further conduct described herein, Defendant has engaged, is engaging, or is about to engage in acts and practices in violation of the Act, as amended by the CRA, and the Regulations.

4. Accordingly, pursuant to Section 6c of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13a-1, and Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2), the Commission brings this action to enjoin Defendant's unlawful acts and practices and to compel its compliance with the Act, as amended by the CRA, and the Regulations and to further enjoin Defendant from engaging in certain commodity or forex-related activity, including, through its website, soliciting customers or offering to be the counterparty to customers' forex transactions, without appropriate registration with the Commission.

5. In addition, the Commission seeks a civil monetary penalty and remedial ancillary relief, including, but not limited to, trading and registration bans, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

6. Unless restrained and enjoined by this Court, Defendant likely will continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below.

## **II. JURISDICTION AND VENUE**

7. Section 6c(a) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13a-1(a), authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of the Act or any rule, regulation, or order thereunder.

8. The Commission has jurisdiction over the conduct and transactions at issue in this case pursuant to Section 6c of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13a-1, and Section 2(c)(2) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2).

9. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13a-1(e), because Defendant transacts business in this District and certain transactions, acts, practices, and courses of business alleged in this Complaint occurred, are occurring, and/or are about to occur within this District.

## **III. PARTIES**

10. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency charged with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.*, and the Regulations thereunder, 17 C.F.R. §§ 1.1 *et seq.*

11. Defendant **InovaTrade, Inc.** is a corporation with its principal place of business located at Torres Las Americas, Punta Pacifica, 15 Floor, Panama City, Panama. InovaTrade is

also an inactive Florida corporation with a last known principal place of business at 7699 Milano Drive, Orlando, Florida. Further, InovaTrade currently maintains a U.S. business address at Espirito Santo Plaza, Brickell Avenue, Suite 800, Miami, Florida. InovaTrade has never been registered with the Commission in any capacity.

#### **IV. STATUTORY BACKGROUND**

12. For the purposes of trading forex, an RFED is defined in Regulation 5.1(h)(1), to be codified at 17 C.F.R. § 5.1(h)(1), as any person that is, or offers to be, the counterparty to a retail forex transaction, except for a person described in sub-paragraphs (aa), (bb), (cc), (dd), (ee), or (ff) of Section 2(c)(2)(B)(i)(II) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(B)(i)(II). These exceptions, which do not apply to InovaTrade, pertain to certain financial institutions, brokers and dealers registered under the Securities Exchange Act of 1934 and associated persons thereof, futures commission merchants and affiliated persons thereof, financial holding companies, and RFEDs registered with the Commission.

13. An ECP is defined by the Act, in relevant part, as an individual with total assets in excess of (i) \$10 million, or (ii) \$5 million and who enters the transaction “to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.” Section 1a(12)(A)(xi) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 1a(12)(A)(xi).

#### **V. FACTS**

14. On October 18, 2010, Regulations implementing certain provisions of Dodd-Frank and the CRA became effective. For the purposes of forex transactions, the new Regulations, among other things, require RFEDs to register with the Commission.

15. InovaTrade, through its website, [www.inovatrade.com](http://www.inovatrade.com), solicits and accepts orders from customers in the United States who are not ECPs to open leveraged forex trading accounts at InovaTrade. InovaTrade acts as an RFED by either being or offering to be the counterparty to retail forex transactions.

16. The website refers to InovaTrade as “an industry leader and one of the world’s largest institutional inter-bank Futures Commission Merchants specializing solely in spot forex transactions.”

17. Through its website, InovaTrade solicits non-ECPs (including non-ECPs found within this District) to:

- a. “Open a Live Account”
- b. “Apply for a Forex account today. It’s simple and easy to get started. In approximately five minutes, you can open a Trading Account. You can then use all potency of powerful InovaTrade® Platform.”
- c. “Choose the right trading account to suit your specific requirements”

18. InovaTrade offers “Demo, Mini, Standard, Managed, Institutional and Prime Broker Account[s]” to non-ECPs. InovaTrade also has a Retail Account which is “[d]esigned for Traders new to the [f]orex market and those trading smaller volumes, Retail Accounts allow Investors to trade smaller trade sizes,” and “InovaTrade offers up to 500:1 leverage in Retail Accounts.”

19. InovaTrade offers its RFED services to citizens and residents of the United States. Before entering the InovaTrade website, a user must select their region; one of the regions which a user may select is the United States. InovaTrade also has a “US disclaimer,” wherein it discusses trading accounts of U.S. citizens and residents at InovaTrade. Further, under “Live

Account FAQs,” it lists the specific documents needed for U.S. citizens and residents to open a live trading account at InovaTrade.

20. InovaTrade specifically states that “InovaTrade Inc. is acting sometimes as a counterparty in these transactions and, therefore, acts as the buyer when you sell and the seller when you buy.” InovaTrade also offers “straight-through processing” (STP) to a “liquidity provider.” Under its STP method of execution, InovaTrade acts or offers to act as the counterparty with the customer in creating one transaction while finding another counterparty to make an offsetting transaction with InovaTrade. In either method of execution, InovaTrade is or offers to be the counterparty.

21. On information and belief, the forex transactions InovaTrade engages in neither result in delivery within two days nor create an enforceable obligation to deliver between a seller and a buyer who have the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these forex contracts remain open from day to day and ultimately are offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

22. Thus, InovaTrade has been and is acting as an RFED and has been and is soliciting non-ECPs to trade forex at InovaTrade.

23. But, as of the date of filing this Complaint, InovaTrade has not registered with the Commission, as required by the Regulations.

24. InovaTrade is not exempt from registration by virtue of meeting any of the descriptions in sub-paragraphs (aa), (bb), (cc), (dd), (ee), or (ff) of Section 2(c)(2)(B)(i)(II) of the Act.

**VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

**COUNT ONE:**

**VIOLATION OF SECTION 2(c)(2)(C)(iii)(I)(aa) OF THE ACT, AS AMENDED BY THE CRA  
FAILURE TO REGISTER**

25. Paragraphs 1 through 24 are realleged and incorporated herein,

26. During the relevant period, InovaTrade, solicited or accepted orders from non-ECPs in connection with forex transactions at an RFED. InovaTrade engaged in this conduct without being registered as an RFED, as required by Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i), all in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa).

27. Each day that InovaTrade engaged in this conduct since October 18, 2010 is alleged as a separate and distinct violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa).

**COUNT TWO:**

**VIOLATION OF REGULATION 5.3(a)(6)(i)  
FAILURE TO REGISTER AS A RETAIL FOREIGN EXCHANGE DEALER**

28. Paragraphs 1 through 27 are realleged and incorporated herein.

29. As set out in Paragraphs 1 through 27, during the relevant period, InovaTrade acted as an RFED, as defined in Regulation 5.1(h)(1), to be codified at 17 C.F.R. § 5.1(h)(1), and failed to register as an RFED, in violation of Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i).

30. Each day that InovaTrade failed to register as an RFED since October 18, 2010 is alleged as a separate and distinct violation of Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i).

## **VII. RELIEF REQUESTED**

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13a-1, and pursuant to its own equitable powers, enter:

- A. An order finding that InovaTrade violated Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa);
- B. An order finding that InovaTrade violated Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i);
- C. An order of permanent injunction prohibiting InovaTrade, and any other person or entity associated with it, from engaging in conduct in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended by the CRA, and Dodd-Frank, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa);
- D. An order of permanent injunction prohibiting InovaTrade, and any other person or entity associated with it, from engaging in conduct in violation of Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i);
- E. An order of permanent injunction prohibiting InovaTrade, and any other person or entity associated with it or its website, from operating its website while in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended by the CRA and Dodd-Frank, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa), and Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i);
- F. An order of permanent injunction prohibiting InovaTrade and any successor thereof, from, directly or indirectly:

- 1) Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended by the CRA and Dodd-Frank, to be codified at 7 U.S.C. § 1a);
- 2) Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2010)) (commodity options), and/or foreign currency (as described in Section 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended by the CRA and Dodd-Frank, to be codified at 7 U.S.C. § 2(c)(2)(B) and 2(c)(2)(C)(i)) (forex contracts), for its own personal account or for any account in which it has a direct or indirect interest;
- 3) Having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on its behalf;
- 4) Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, and/or forex contracts;
- 5) Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;
- 6) Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010); and

7) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2010)), agent, or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010).

G. Enter an order requiring InovaTrade, as well as any successors to it, to disgorge to any officer appointed or directed by the Court all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues, and trading profits derived, directly or indirectly, from acts or practices that constitute violations of the Act, as amended by the CRA, and the Regulations, including pre- and post-judgment interest;

H. Enter an order directing InovaTrade and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between it and any of the customers whose funds were received by it as a result of the acts and practices which constituted violations of the Act, as amended by the CRA, and the Regulations as described herein;

I. Enter an order requiring InovaTrade to pay a civil monetary penalty under the Act, to be assessed by the Court, in amounts of not more than the higher of: (1) triple the monetary gain to InovaTrade for each violation of the Act, as amended by the CRA, and the Regulations; or (2) \$140,000 for each violation;

J. Enter an order requiring InovaTrade to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

K. Enter an Order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Respectfully submitted,

PLAINTIFF U.S. COMMODITY  
FUTURES TRADING COMMISSION

/s/ Charles D. Marvine

Margaret Aisenbrey  
Missouri Bar No. 59560  
*maisembrey@cftc.gov*  
(816) 960-7749

Charles Marvine  
Missouri Bar No. 44906  
*cmarvine@cftc.gov*  
(816) 960-7743

U.S. Commodity Futures Trading Commission  
Division of Enforcement  
Two Emanuel Cleaver II Boulevard, Suite 300  
Kansas City, MO 64112  
(816) 960-7749 (fax)