

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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|---------------------------------------|---|--------------------------------|
| COMMODITY FUTURES TRADING COMMISSION, | : | |
| | : | |
| Plaintiff, | : | CIVIL ACTION NO.: 11-cv-6204 |
| | : | |
| v. | : | COMPLAINT FOR PERMANENT |
| | : | INJUNCTION, CIVIL MONETARY |
| MF FINANCIAL, LTD., | : | PENALTIES, AND OTHER EQUITABLE |
| | : | RELIEF |
| | : | |
| Defendant. | : | |

Plaintiff, Commodity Futures Trading Commission (“Commission” or “CFTC”), by its attorneys, alleges as follows:

I. SUMMARY

1. On October 18, 2010, the CFTC adopted new regulations implementing certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010) (“Dodd-Frank Act”), §§ 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 (“the Act”), as amended, 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), 17 C.F.R. § 5.3(a)(6)(i) (2011), in

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

2. Beginning on October 18, 2010 and continuing to the present (the “relevant period”), Defendant MF Financial, Ltd. (“MFFX”), upon information and belief, solicits or accepts orders from non-ECPs located in the United States in connection with retail forex transactions and is, or offers to be, the counterparty to these retail forex transactions without being registered as an RFED with the CFTC, in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa), and Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011).

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

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

5. In addition, the Commission seeks civil monetary penalties 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, MFFX 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, 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 Sections 2(c)(2) and 6c of the Act, as amended , to be codified at 7 U.S.C. §§ 2(c)(2) and 13a-1.

9. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, as amended , to be codified at 7 U.S.C. § 13a-1(e), because MFFX 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 **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress 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.* (2011).

11. Defendant **MF Financial, Ltd.** is a company that is apparently incorporated in Belize. According to its website, MFFX's principal place of business is 2nd Floor, 145-157 St. John Street, London EC1V 4PY, United Kingdom. MFFX also lists an office at 110 Wall Street,

11th Floor, New York, NY, 10005 and has a United States toll-free telephone number of 888-384-8860. MFFX has never been registered with the Commission in any capacity.

IV. STATUTORY BACKGROUND

12. For the purposes of trading retail forex, a “retail foreign exchange dealer” is defined in Regulation 5.1(h)(1), 17 C.F.R. § 5.1(h)(1) (2011), as any person that is, or offers to be, the counterparty to a retail forex transaction, except for certain persons not relevant to this Complaint.

13. An Eligible Contract Participant 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.” *See* Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1a.

V. FACTS

14. On October 18, 2010, the Commission adopted new regulations implementing certain provisions of the Dodd-Frank Act and the CRA. For the purposes of retail forex transactions, the new regulations, among other things, require RFEDs to register with the CFTC.

15. On information and belief, MFFX solicits or accepts orders from United States customers who are not ECPs to open leveraged forex trading accounts through its website, www.mffx.com. This domain name is hosted by a company based in San Antonio, Texas and registered through a domain name registrar in Utah.

16. As advertised on its website, MFFX offers three types of forex trading accounts: “Standard Forex,” which requires an opening minimum deposit of \$2000 and allows leverage of up to 200:1; “Mini Forex,” which requires an opening minimum deposit of \$100 and allows

leverage of up to 200:1; and “Platinum 100K,” which requires an opening minimum deposit of \$100,000 and allows leverage of up to 50:1. The amounts required to fund these accounts are quoted in United States dollars.

17. MFFX uses the “MetaTrader” trading platform, which is commonly used by companies that offer forex trading accounts. MetaTrader allows customers to place trades electronically, which MFFX then executes on their behalf. MFFX also offers a “dealing desk,” which executes trades that customers place by telephone.

18. Customers can open trading accounts with MFFX by submitting information online through MFFX’s website, or sending the documents to MFFX via facsimile.

19. To open an account, the website directs customers to click on a link titled “Open Trading Account.” The customer may then either proceed to another link titled “Click Here to APPLY” in order to submit an on-line application or the customer may click on a “Download Form” link in order to print out hard copies of the application documents, including a Trader Account Letter, Trader Agreement, and addenda for joint accounts, partnerships and corporations, and submit them via facsimile.

20. Once customers using the on-line application method acknowledge receipt of the risk disclosures, they are directed to another page to enter account holder information, including name, address, telephone number and email contact information, country of citizenship, and type of account to open. There is a drop down menu for “country” in the address section that allows the customer to choose “United States” and another drop down menu “Country of Citizenship” that also allows customers to choose “United States.”

21. The hard copy application documents request similar information, including the “City,” “State,” “Zip,” “Country,” and “Country of Citizenship” for each trader to be listed on an account.

22. MFFX inquires about an account holder’s annual income and net worth but it fails to inquire whether its customers are “eligible contract participants” and, in fact, appears to allow individual customers who do not have total assets of \$5 million to open accounts.

23. According to the website, after the application is reviewed, MFFX sends the customer wire instruction via email to fund the account. MFFX then deposits the customer funds in an offshore banking facility where they are purportedly kept separate from MFFX’s operating capital. Customers are advised that they can withdraw funds from their accounts by submitting a withdrawal form to MFFX.

24. Once MFFX has verified that the account has been funded, it emails the customer a deposit confirmation along with a username and password for the customer to use to place trades through MFFX’s trading platform.

25. Paragraph 3 of the MFFX Trader Agreement obligates customers to “deposit and maintain with MFFX margin in such amounts and in such forms as MFFX, in its sole and absolute discretion, may from time to time require.”

26. Paragraph 4 of the MFFX Trader Agreement states that each customer position “will be automatically rolled-over as an open position in the Account to the next business day; successively, subject at all times to the right of MFFX, in its sole and absolute discretion, to liquidate said position in accordance with the provisions of this Agreement...” Accordingly, the forex transactions MFFX 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.

27. Paragraph 23 of the MFFX Trader Agreement provides that the customer “expressly acknowledges and agrees that a situation may arise from time to time whereby an officer, director, partner, affiliate, associate employee, independent contractor, bank, bank employee, dealer or other person associated with MFFX may be the opposing counter party or broker for a Spot FOREX Transaction conducted in the Account. In addition, MFFX or an affiliate may, when appropriate, take as principal the opposing side of a Spot FOREX Transaction conducted in the Account for which it is also acting as Trader’s agent pursuant to the terms hereof.”

28. Thus, MFFX has been and is acting as an RFED and continues to do so by offering to act as a counterparty for United States customers to trade forex at MFFX.

29. By the date of the filing of this complaint, MFFX has not registered with the Commission as an RFED or in any other capacity.

30. Furthermore, MFFX is not exempt from registration.

VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE:

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

31. Paragraphs 1 through 30 are realleged and incorporated herein.

32. During the relevant period, MFFX solicits or accepts orders from non-ECPs in connection with leveraged or margined forex transactions at an RFED. MFFX engages in this conduct without being registered at an RFED, as required by Regulation 5.3(a)(6)(i), 17 C.F.R.

§ 5.3(a)(6)(i) (2011), all in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa).

33. Each day that MFFX engages 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, 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**

34. Paragraphs 1 through 30 are realleged and incorporated herein.

35. During the relevant period, MFFX is, or offers to be, the counterparty to retail forex transactions without being registered 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) (2011).

36. Each day that MFFX fails to register as an RFED since October 18, 2010 is alleged as a separate and distinct violation of Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011).

VII. RELIEF REQUESTED

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

A. An order finding that MFFX violated Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa);

B. An order finding that MFFX violated Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011);

C. An order of permanent injunction prohibiting MFFX, 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, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa);

D. An order of permanent injunction prohibiting MFFX, and any other person or entity associated with it, from engaging in conduct in violation of Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011);

E. An order of permanent injunction prohibiting MFFX, 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, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa), and Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011);

F. An order of permanent injunction prohibiting MFFX 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, 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) (2011)) (“commodity options”), swaps, and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, 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, swaps, 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, commodity options, swaps, 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, swaps, and/or forex contracts;
- 6) Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and
- 7) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent, or any other officer or employee of any person registered, exempted from registration or required to be registered with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).

G. Enter an order requiring that MFFX, as well as any of its successors, 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, and the Regulations, including pre and post-judgment interest;

H. Enter an order directing MFFX 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 them as a result of the acts and practices, which constituted violations of the Act, as amended, and the Regulations as described herein;

I. Enter an order requiring MFFX to pay civil monetary penalties under the Act, to be assessed by the Court, in amounts of not more than the greater of: (1) triple its monetary gain for each violation of the Act, as amended, and the Regulations or (2) \$140,000 for each violation committed on or after October 23, 2008;

J. Enter an order requiring MFFX 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.

Date: September 7, 2011

Respectfully submitted,

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