

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

)	
U.S. COMMODITY FUTURES TRADING)	
COMMISSION,)	
)	
Plaintiff,)	
)	CASE NO. _____
v.)	
)	
TOTAL CALL GROUP, INC., a Delaware)	
corporation a/k/a TPFX, INC. a/k/a POWER)	
PLAY FX; CRAIG B. POE, an individual;)	
and THOMAS PATRICK THURMOND)	
a/k/a Patrick Thurmond, an individual,)	
)	
Defendants.)	

**COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL MONETARY
PENALTIES, AND OTHER EQUITABLE RELIEF**

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

I. SUMMARY

1. Beginning in or about early 2006 and continuing until October 2008, Total Call Group, Inc. a/k/a TPFX, Inc. a/k/a Power Play FX (“Total Call Group”), by and through its principals and control persons, Craig B. Poe (“Poe”) and Thomas Patrick Thurmond a/k/a Patrick Thurmond (“Thurmond”), individually and in their capacity as officers, employees, and agents of Total Call Group, (collectively, “Defendants”), solicited approximately \$808,000 from at least four customers, \$10,000 of which was solicited and received after June 18, 2008, for the purpose of trading off-exchange foreign currency contracts (“forex”). Defendants deposited and/or pooled approximately \$800,000 of these funds into three forex trading accounts held by

Defendants in the name of “Total Call Group, Poe B. Craig” at Forex Capital Markets LLC (“FXCM”), a registered futures commission merchant (“FCM”). Defendants also deposited an additional \$26,000, the source of which is unknown, into the trading accounts at FXCM.

2. From approximately July 2007 through July 2008, Defendants remitted funds from the trading accounts to the customers totaling approximately \$144,000. During approximately this same time period, Defendants withdrew funds from the trading accounts totaling approximately \$129,000, approximately \$13,000 of which was withdrawn after June 18, 2008, which amounts were purportedly equal in part to what Defendants were entitled to take as profits or fees under the terms of their agreements with the customers.

3. At the end of August 2008, Defendants sustained trading losses and incurred FCM fees amounting to approximately 90% of the then current balance in the trading accounts. Over the course of the next two months, Defendants traded and lost almost all of the remaining funds (approximately \$55,000) in the trading accounts. On November 13, 2008, FXCM wire transferred the remaining balance of approximately \$1,000 to Defendants. From early 2007 through December 2008, Defendants sustained trading losses and incurred FCM fees totaling approximately \$552,000 trading forex.

4. From September through December 2008, Poe, acting individually and as an agent of Total Call Group, willfully made, and caused to be made, a total of at least twenty-five false reports and statements to at least three of Total Call Group’s customers. These statements overstated profits and understated losses from forex trading and falsely reported the customers’ respective shares of the balance in Total Call Group’s forex trading accounts.

5. By virtue of this conduct and the further conduct described herein, Poe and Total Call Group have engaged, are engaging, or are about to engage in acts and practices in violation of the anti-fraud provisions of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 1 *et seq.* (2006), as amended by 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).

6. Poe, as an agent, employee or officer of Total Call Group, committed the acts and omissions described herein within the course and scope of his employment, agency or office with Total Call Group; therefore, Total Call Group is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation (“Regulation”) 1.2, 17 C.F.R. § 1.2 (2009), for violations of the Act, as amended by the CRA, by Poe.

7. Poe and Thurmond are controlling persons of Total Call Group. They failed to act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations. Poe and Thurmond are therefore liable for Total Call Group’s violations of the Act, as amended by the CRA, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

8. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), 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 Defendants’ unlawful acts and practices and to compel Defendants to comply with the Act, as amended by the CRA, and to further enjoin Defendants from engaging in certain commodity or forex-related activity. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, and such other relief as the Court may deem necessary and appropriate.

9. Unless restrained and enjoined by this Court, Defendants are likely to 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

10. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2). Section 6c(a) authorizes the Commission to seek injunctive relief in district court 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. In addition, this section authorizes the Commission to bring a civil action in district court to enforce compliance with the Act and any rule, regulation or order thereunder.

11. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because Defendants are found, inhabit, reside and/or transact business in the Eastern District of Texas, and certain of the transactions, acts, practices, and courses of business alleged to have violated the Act, as amended by the CRA, occurred, are occurring, and/or are about to occur within this District.

III. PARTIES

12. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.* (2006), as amended by the CRA, and the Regulations promulgated

thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2009). The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

13. Defendant **Total Call Group, Inc. a/k/a TPFX, Inc. a/k/a Power Play FX** is a Delaware corporation with its principal place of business at 5404 Golden Sunset Court, Frisco, Texas 75034. Total Call Group was incorporated in October 2005 and was, and still may be, engaged in the business of soliciting and accepting funds from customers for the purpose of entering into margined or leveraged agreements, contracts or transactions in forex on behalf of Total Call Group's customers. Total Call Group has never been registered with the Commission. Total Call Group is not a financial institution, registered broker dealer, insurance company, bank holding company, investment bank holding company, or the associated person of any such entity.

14. Defendant **Craig B. Poe** resided at 5404 Golden Sunset Court, Frisco, Texas 75034 during all relevant times. Poe was a principal of Total Call Group and was responsible for trading forex and producing account statements to the customers. Poe has never been registered with the Commission.

15. Defendant **Thomas Patrick Thurmond a/k/a Patrick Thurmond**, resides in San Antonio, Texas. Thurmond was a principal of Total Call Group and was responsible for soliciting customers. Thurmond has never been registered with the Commission.

IV. FACTS

Defendants' Solicited \$808,000 to Trade Forex on Behalf of Customers

16. Beginning in at least early 2006 and continuing up until October 2008, Defendants solicited approximately \$808,000 from at least four customers, \$10,000 of which was solicited after June 18, 2008, to trade forex. Defendants deposited and/or pooled

approximately \$800,000 of these funds into three forex trading accounts held by Defendants in the name of "Total Call Group, Poe B. Craig" at FXCM. Defendants also deposited an additional \$26,000, the source of which is unknown, into the FXCM trading accounts.

17. In soliciting these funds, Thurmond made false representations to one or more of Total Call Group's customers. For instance, Thurmond falsely stated that Poe had been trading forex and living off the income for over four years. An examination of Poe's prior forex trading history reveals, however, that, from at least January 2005 through October 2005, Poe did not maintain any domestic forex trading accounts and that, from November 2005 through June 2006, Poe traded a total of only \$18,000 in forex and sustained losses and incurred FCM fees of more than \$17,000. Thurmond also falsely represented that he and Poe had personally provided over \$1 million to Total Call Group. From January 2005 through December 2008, Defendants provided Total Call Group with, at most, a total of less than \$45,000.

18. The customers provided funds to Defendants for the express purpose of trading forex and the customers and Defendants agreed to share the profits from Defendants' forex trading. In communications to Total Call Group's customers, Defendants referred to Defendants' share of the profits as the "Performance Fee" or the "Fees to Trader."

19. From July 2007 through July 2008, Defendants withdrew approximately \$129,000 from the trading accounts, which amounts were purportedly equal in part to what Defendants were entitled to take as profits or fees under the terms of their agreements with the customers. Defendants, however, were not entitled to at least some of these funds because the profits reported to the customers, which were used to calculate Defendants' fees or share of the profits,

were false. During this time period, Defendants also remitted funds from the trading accounts totaling approximately \$144,000 to the customers.

Defendants' Loss of Customers' Funds Trading Forex from August – November 2008

20. At the end of August 2008, Defendants sustained trading losses and incurred FCM fees amounting to approximately 90% of the then current balance of the trading accounts. However, Defendants did not report these substantial losses to the customers.

21. Rather, in late September 2008, Defendants continued to promote the profitability of trading and solicit additional funds from the customers. In response, one customer provided an additional \$10,000 to trade forex in October 2008, \$6,500 of which was deposited into the FXCM trading accounts, the remaining \$3,500 of which remains unaccounted for.

22. In September, October and November 2008, Defendants traded and lost almost all of the remaining funds (over \$55,000) in the trading accounts. On November 13, 2008, FXCM wire transferred the remaining balance of approximately \$1,000 to Poe. From early 2007 through November 2008, Defendants sustained trading losses and incurred FCM fees totaling approximately \$552,000 trading forex. Almost all of these losses and fees were incurred during the period from August through November 2008.

False Account Statements Sent to Customers from September – December 2008

23. Beginning in at least July 2007 and continuing through December 2008, Poe sent account statements to customers which were false. The statements sometimes overstated profits or understated losses from trading and at other times failed to disclose unrealized or floating losses from open trades.

24. In September, October, November, and December 2008, Poe sent at least twenty-five account statements to at least three customers which falsely reported purported profits and/or failed to disclose losses from trading and the customers' respective balances in the forex trading accounts. Several of the false statements, which were sent to the customers after the trading accounts were fully liquidated on November 13, 2008, collectively reflect a positive balance of over \$750,000 in Total Call Group's forex trading accounts. For instance, Poe sent statements to three customers for the week ending December 12, 2008 which showed that, during the period from December 5 through December 12, 2008, the first customer sustained a loss of approximately \$1,230 and had a balance of over \$587,000, the second customer sustained a loss of approximately \$117 and had a balance of over \$66,000, and the third customer sustained a loss of approximately \$42 and had a balance of over \$101,000 in the trading accounts. In fact, 1) there were no trading losses during the week ending December 12, 2008 because there was no trading activity during that week; 2) the balances reported were false because all of the funds had been withdrawn on November 13, 2008; and 3) the collective balance in the trading accounts was \$0.

25. The customers relied on Defendants' representations and omissions in the false account statements in making their decisions to provide funds to Defendants to trade forex.

Defendants Reveal Loss of Customer Funds

26. In late December 2008, after receiving requests for redemptions from at least two customers, Poe informed at least three of the customers that all of the money in the trading accounts had been lost. At that time, Poe acknowledged that: (i) statements he sent out to customers in late 2008 were incorrect; (ii) prior statements sent to customers, which failed to

reflect the unrealized or floating losses from open trades, were inaccurate; (iii) he tried to hide bad trades; and (iv) what he did was not right.

27. Also, in approximately late December 2008, Thurmond falsely represented to one customer that Thurmond had lost “ten times” as much as that customer with Total Call Group.

Forex Transactions Entered into on Behalf of Total Call Group’s Customers

28. During the period relevant to this Complaint, neither Defendants nor FXCM, which was the counterparty to the forex transactions entered into by Defendants on behalf of the customers, were financial institutions, registered broker dealers, insurance companies, bank holding companies, or investment bank holding companies or the associated persons of any of these types of entities.

29. Total Call Group, as well as at least three of the four customers who provided funds to the Defendants, were not “eligible contract participants” as that term is defined in the Act. *See* Section 1a(12)(A)(v) of the Act, 7 U.S.C. § 1a(12)(A)(v) and Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12)(A)(xi) (2006) (an “eligible contract participant,” as relevant here, is “a corporation . . . that has total assets exceeding \$10,000,000 . . .” or 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”).

30. Defendants traded foreign currency on a margined or leveraged basis in the trading accounts containing customer funds. The foreign currency transactions conducted by Defendants neither resulted in delivery within two days nor created an enforceable obligation to deliver between a seller and a buyer that had the ability to deliver and accept delivery,

respectively, in connection with their lines of business. Rather, these foreign currency contracts remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

Poe and Thurmond are Control Persons of Total Call Group

31. At all material times, Poe and Thurmond were the sole principals of Total Call Group and together were responsible for all of the corporation's acts. Poe was responsible for trading forex and sending account statements to customers, while Thurmond was responsible for soliciting customers. Accordingly, Poe and Thurmond are controlling persons of Total Call Group.

32. Thurmond had the ability to examine the trading account records at FXCM and compare that data to the information reported in the false account statements sent to customers by Poe. Thus, Thurmond knew, consciously avoided learning, or acted recklessly in failing to learn that the customer account statements sent by Poe contained false information.

V. COUNT ONE: Violations of the Commodity Exchange Act

**Violations of Sections 4b(a)(2)(A)-(C) of the Act,
as amended by the CRA
(Fraud by Issuance of False Statements)**

33. The allegations set forth in paragraphs 1 through 32 are realleged and incorporated herein by reference.

34. Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C), make it unlawful

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g), that is made, or to be made, for or on behalf of, or with, any other person, other than on

or subject to the rules of a designated contract market – (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person.

Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, applies to the foreign currency transactions, agreements or contracts offered to or entered into by Defendants for or on behalf of Total Call Group's customers. *See* Section 2(c)(2)(C)(iv) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iv).

35. As set forth above, from at least June 18, 2008 through December 2008, in or in connection with foreign currency contracts made, or to be made, for or on behalf of, or with, other persons, Defendant Poe cheated or defrauded or attempted to cheat or defraud other persons, willfully deceived or attempted to deceive other persons, and willfully made or caused to be made false reports or statements to other persons by, among other things, knowingly making, causing to be made, and distributing reports and statements to Total Call Group customers that contained false profits and losses from trading and false information regarding each customer's respective balance in the forex trading accounts, and other misinformation, all in violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

36. Defendant Poe engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

37. The foregoing acts, misrepresentations, omissions, and failures of Poe occurred within the scope of his employment, office or agency with Total Call Group; therefore, Total Call Group is liable for these acts, misrepresentations, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2009).

38. Poe and Thurmond controlled Total Call Group, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Total Call Group's conduct alleged in this Complaint; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Poe and Thurmond are liable for Total Call Group's violations of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

39. Each act of making or causing to be made a false report or statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and pursuant to its own equitable powers, enter:

a) An order finding that Defendants violated Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C);

b) An order of permanent injunction prohibiting Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any Defendant, including any successor thereof, from engaging, directly or indirectly:

- (i) in conduct in violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C); and
- (ii) in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (2006) (“commodity interest”), including but not limited to, the following:
 - (aa) trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006));
 - (bb) entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1)) (“commodity options”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for their own personal account or for any account in which they have a direct or indirect interest;
 - (cc) having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;
 - (dd) 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;

(ee) soliciting, receiving, or accepting any funds from any person for purposes of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;

(ff) 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) (2009); and

(gg) acting as a principal (as that term is defined in Regulation 3.1(a)), 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) (2009).

c) An order directing Defendants, as well as any successors to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act, as amended by the CRA, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

d) An order directing Defendants to make full restitution to every person or entity whose funds they received or caused another person or entity to receive as a result of acts and practices that constituted violations of the Act, as amended by the CRA, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

e) An order directing each Defendant to pay a civil monetary penalty for each violation of the Act, as amended by the CRA, described herein, plus post-judgment interest, in the amount of the higher of: \$140,000 for each violation of the Act, as amended by the CRA, committed on or after October 23, 2008, \$130,000 for each violation of the Act, as amended by the CRA, committed between June 18, 2008 and October 23, 2008; or triple the monetary gain to the Defendants for each violation of the Act, as amended by the CRA, described herein, plus post-judgment interest;

f) An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

g) Such other and further relief as the Court deems proper.

Dated: September 29, 2010

Respectfully Submitted,

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