

17 C.F.R. § 5.3(a)(6)(i), in connection with 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”), EuroForex Development LLC (“EuroForex”), while acting as an RFED, solicited orders from non-ECPs in connection with forex transactions without registering with the CFTC, 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, EuroForex 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 EuroForex’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 EuroForex 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 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, EuroForex 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 EuroForex 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.*

11. Defendant **EuroForex Development LLC** is a limited liability company that was formed under Delaware law on May 7, 2004. EuroForex utilizes Delaware Registry, Ltd. at 3511

Silverside Road, Suite 105, Wilmington, Delaware 19810 as its registered office and registered agent. EuroForex has never been registered with the Commission in any capacity.

IV. STATUTORY BACKGROUND

12. For the purposes of trading forex, a “retail foreign exchange dealer” 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-paragraph (aa), (bb), (cc)(AA), (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 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, and do not apply to EuroForex.

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.” *See* 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, the Commission enacted new regulations implementing certain provisions of Dodd-Frank and the CRA. For the purposes of forex transactions, the new regulations, among other things, require RFEDs to register with the CFTC.

15. EuroForex Development LLC solicits potential customers who are not ECPs in the United States to open leveraged forex trading accounts through its website, <http://www.euroforex.net>. This website is hosted by a server located in Orlando, Florida.

16. As advertised on its website, EuroForex offers two types of forex trading accounts: “regular accounts” that require an initial deposit of \$3000 and “mini accounts” that require an initial deposit of \$200. The amounts required to fund these accounts are quoted in United States dollars.

17. EuroForex utilizes the “MetaTrader” trading platform, which is commonly used by companies that offer forex trading accounts.

18. Customers can open trading accounts by submitting information online through EuroForex’s website, calling a EuroForex manager at a United States phone number (206-339-6104), or emailing the company at sales@euroforex.net.

19. To open an account by submitting information online, the website directs customers to click on a link titled “How to Open a Trading Account,” then proceed to another link titled “Agreement.”

20. At the Agreement link, EuroForex defines the terms used in its Agreement with customers, describes the currencies available for trading, explains its trading process and has a series of disclaimers and notices regarding customers’ rights and responsibilities.

21. At the Agreement page, EuroForex also states that its registered office is at 35111 Silverside Road, Suite 105, Wilmington, Delaware 19810, USA.

22. If the customer checks the “I agree” box and clicks “next,” she will be redirected to another page to enter certain information, such as her name, address, telephone and email contact information, citizenship and proposed account balance.

23. After a United States customer submits the requested information, EuroForex sends the customer an email summarizing the information submitted with an “Agreement of the procedure for conversion and arbitrage operations” attached. This Agreement reiterates the same information provided under the “Agreement” link on EuroForex’s website, including the location of its registered office in Wilmington, Delaware.

24. EuroForex fails to inquire whether its customers are “eligible contract participants” and, in fact, allows individual customers who do not have total assets of \$5 million to open accounts.

25. To complete the account opening procedure, the customer must then fund her account within 30 days by sending the required deposit to EuroForex’s account at a bank located in Latvia. According to the website, the customer funds received by EuroForex are used for margin purposes to support each customer’s forex positions in their EuroForex accounts.

26. As EuroForex’s website and email demonstrates, it offers to accept funds from United States customers for the purpose of opening and maintaining individual retail foreign currency trading accounts.

27. On information and belief, EuroForex then acts as a counterparty to its customers’ transactions.

28. On information and belief, EuroForex is not a financial institution, registered broker dealer, insurance company, futures commission merchant, financial holding company, or investment bank holding company or an associated person of any such entity.

29. On information and belief, the forex transactions EuroForex 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).

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

31. But, as of the date of filing this complaint, EuroForex has not registered with the CFTC, as required by the Regulations.

32. Furthermore, EuroForex is not exempt from registration by virtue of meeting any of the descriptions in sub-paragraph (aa), (bb), (cc)(AA), (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

33. Paragraphs 1 through 32 are realleged and incorporated herein.

34. During the relevant period, EuroForex solicited or accepted orders from non-ECPs in connection with forex transactions as an RFED. EuroForex 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).

35. Each day that EuroForex 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**

36. Paragraphs 1 through 32 are realleged and incorporated herein.

37. As set out in paragraphs 1 through 32, during the relevant period, EuroForex 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).

38. Each day that EuroForex 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 CFTC 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 EuroForex 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 EuroForex 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 EuroForex, 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 the Dodd-Frank Act, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa);

D. An order of permanent injunction prohibiting EuroForex, 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 EuroForex, 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 the Dodd-Frank Act, 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 EuroForex 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(29) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a(40));
- 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 Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended by the CRA and the Dodd-Frank Act, 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 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 futures, options, commodity options, and/or forex contracts;

5) Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any futures, options on commodity futures, commodity options, 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) (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 CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010).

G. Enter an order requiring that EuroForex, 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 by the CRA, and the Regulations, including pre and post-judgment interest;

H. Enter an order directing EuroForex 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 by the CRA, and the Regulations as described herein;

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

J. Enter an order requiring EuroForex 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 COMMODITY FUTURES
TRADING COMMISSION

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