IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMODITY FUTURES TRADING COMMISSION, 1155 21st Street, N.W. Washington, D.C. 20581, Plaintiff, v. GIGFX, L.L.C., 2711 Centerville Road, Suite 400, Wilmington, DE 19807, Defendant.	CIVIL ACTION NO.: COMPLAINT FOR PERMANENT INJUNCTION, CIVIL MONETARY PENALTIES, AND OTHER EQUITABLE RELIEF Case: 1:11-cv-00187 Assigned To : Urbina, Ricardo M. Assign. Date : 1/26/2011 Description: General Civil

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

I. SUMMARY

1. On October 18, 2010, the CFTC 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 ("the 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 CFTC as of October 18, 2010.

2. Beginning on October 18, 2010 and continuing to the present (the "relevant period"), Defendant GIGFX, L.L.C. ("GIGFX"), upon information and belief, 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, GIGFX 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 GIGFX'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 GIGFX 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, GIGFX 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 Sections 2(c)(2) and 6c of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 2(c)(2), 13a-1.

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 GIGFX 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 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 **GIGFX, L.L.C.** is a limited liability company ("LLC") with its principal place of business located at 2711 Centerville Road, Suite 400, Wilmington, DE 19807. GIGFX registered as an LLC on July 18, 2008. GIGFX also operates the website

www.gigfx.com, where it solicits potential customers to engage in, among other things, online forex trading. According to the website, GIGFX's Head Office is at 136 Ayias Fylaxeos St., Mariella House, Kapsalos 3087, Limassol Cyprus. GIGFX 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 GIGFX.

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 of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 1a.

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. On information and belief, GIGFX solicits customers who are not ECPs in the United States to open leveraged forex trading accounts through its website *www.gigfx.com*, which purports to trade in forex. GIGFX solicits U.S. customers and does not prohibit non-ECPs from trading forex.

16. As advertised on its website, GIGFX offers three types of trading accounts: individual accounts, joint accounts and corporate accounts, all of which trade in forex.

17. GIGFX utilizes the "GIGFX Trader4" trading platform to trade forex.

18. Customers can open trading accounts by downloading an application online through GIGFX's website, and sending the completed forms via e-mail to cs@gigfx.com or sending a hard copy to Customer Accounts GIGFX LLC, PMB 6624, 2711 Centerville Rd., Ste 120, Wilmington, DE 19808 USA.

19. Through representations made on the website, GIGFX claims to act as the principal for the customer for the execution and clearance of forex contracts "through the GIGFX Internet Trading Platform," which renders GIGFX a counterparty.

20. In addition, GIGFX's "Customer Agreement Risk Disclosure and Trading Rules and Regulations Documents [sic]" made available on the www.gigfx.com website provides: "All Contracts made and entered into between Customer and GIGFX hereunder will be entered into by GIGFX as Principal."

21. On information and belief, the forex transactions GIGFX 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, GIGFX has been and is acting as an RFED and soliciting non-ECPs to trade forex at GIGFX.

23. As of the date of filing this complaint, GIGFX has not registered with the CFTC.

24. Furthermore, GIGFX 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, as amended by the CRA.

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, GIGFX, solicited or accepted orders from non-ECPs in connection with forex transactions at an RFED. GIGFX 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 GIGFX 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 24 are realleged and incorporated herein.

29. As set out in Paragraphs 1 through 24, during the relevant period, GIGFX 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 GIGFX 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 GIGFX 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 GIGFX 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 GIGFX, 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 GIGFX, 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 GIGFX, 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 Section 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 GIGFX 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 Sections 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 their own personal account or for any account in which they have a direct or indirect interest;

3) Having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their 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 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 GIGFX, 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 GIGFX 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 them and any of the investors 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 GIGFX 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 the

monetary gain to GIGFX 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 GIGFX 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 UNITED STATES COMMODITY FUTURES TRADING COMMISSION

Jan. 26, 2011
DATED

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