

HOLWELL

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE HOLWELL

U.S. COMMODITY FUTURES
 TRADING COMMISSION,

 Plaintiff,
 vs.
 HIGHLAND STONE CAPITAL
 MANAGEMENT, LLC., FOREX
 CAPITAL TRADING GROUP, INC.,
 FOREX CAPITAL TRADING
 PARTNERS, INC., JOSEPH BURGOS,
 SUSAN G. DAVIS and DAVID E.
 HOWARD II

 Defendants.

Civil Action No.:

11 CIV 5209

RT

~~Proposed~~ STATUTORY RESTRAINING ORDER

Having read the Complaint for Injunctive and Other Equitable Relief, the Plaintiff's Motion for an *ex parte* Statutory Restraining Order, the Memorandum in Support of Plaintiff's Motion for a Statutory Restraining Order, the Declarations of Joy McCormack, Stephen Dubin, Sol Waksman and David Todnem, and all of the Attachments thereto, and all other papers filed herein by the Plaintiff, Commodity Futures Trading Commission ("CFTC"),

THE COURT FINDS:

1. The Court has jurisdiction over the parties and over the subject matter of this case.
2. Section 6c(a) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 13a-1(a), 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), and 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), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 1 *et seq.*, authorizes this Court to enter an *ex parte* statutory restraining order against Defendants Highland Stone Capital Management, LLC, Forex Capital Trading Group, Inc., Forex Capital Trading Partners, Inc., Joseph Burgos, Susan G. Davis and David E. Howard II.

3. Venue lies properly within this District pursuant to Sections 6c(e) of the Act, 7 U.S.C. § 13a-1(e).

4. It appears to the satisfaction of the Court that there is good cause to believe that the Defendants, have engaged, are engaging in and are about to engage in violations of §§ 4(b)(a)(2)(A) - (C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A) - (C) and, with respect to acts occurring on or after October 18, 2010, have engaged in violations of Sections 5.3(a)(3)(i) and 5.3(a)(ii) of the Regulations, to be codified at 17 C.R.R. 5.3(a)(3)(i) and 5.3(a)(ii), and that Defendants Forex Capital Trading Group, Inc., Forex Capital Trading Partners, Inc., Davis and Howard, with respect to acts occurring on or after October 18, 2010, have engaged in violations of Sections 5.3(a)(5)(i) and 5.3(a)(5)(ii) of the Regulations, to be codified at 17 C.F.R. 5.3(a)(5)(i) and 5.3(a)(5)(ii).

5. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for investors in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition by Defendants of assets or records unless Defendants are immediately restrained and enjoined by order of the Court, and accordingly there is good cause to issue this Order.

6. It further appears to the satisfaction of the Court that this is a proper case for granting a statutory restraining order to preserve the status quo, protect public customers from loss and damage, and enable the CFTC to fulfill its statutory duties.

ORDER

DEFINITIONS

For the purposes of this Order, the following definitions apply:

7. “Assets” means any legal or equitable interest in, right to, or claim to, any real or personal property, including but not limited to chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts including bank accounts and all accounts at financial institutions, brokerage firms or futures commissions merchants (“FCMs”), retail foreign exchange dealers (“RFEDs”), credits, receivables, lines of credit, contracts including spot, futures and forex contracts, insurance policies, and all cash, wherever located.

8. “Document” is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

9. “Defendants” means Highland Stone Capital Management, L.L.C., Forex Capital Trading Group, Inc., Forex Capital Trading Partners, Inc., Joseph Burgos, Susan G. Davis and David Howard II, and any person insofar as he or she is acting in the capacity as an officer, agent, servant, employee or attorney of any of the Defendants, individually or jointly, and any

person who receives actual notice of this Order by personal service or otherwise, including UPS or other commercial overnight service, email or facsimile.

RELIEF GRANTED
STATUTORY RESTRAINING ORDER

I. ASSET FREEZE

10. **IT IS ORDERED** that Defendants, and their agents, servants, employees, successors, assigns, attorneys and all persons insofar as they are acting in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including UPS or other commercial overnight service, email or facsimile, is restrained and enjoined from directly or indirectly dissipating, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, converting or otherwise disposing of any cash, cashier's checks, funds, assets or other property, wherever located, including funds, property or assets held outside the United States, except as ordered by the Court. The assets affected by this Paragraph shall include all of those within the custody, control or actual or constructive possession of Defendants, including, but not limited to, all funds, personal property, money or securities held in Defendants' names, all funds on deposit in any safety deposit box, financial institution, FCM, RFED, custodian, brokerage firm, bank or savings and loan account held by, under the actual or constructive control, or in the name of Defendants, wherever located, whether held in the name of the Defendants, individually or jointly, or any other entity owned or controlled by Defendants, or held on behalf of the Defendants. The assets affected by this Paragraph shall include both existing assets and assets acquired after the effective date of this Order, as well as accounts held at the institutions specifically identified below.

11. **IT IS FURTHER ORDERED** that, pending further Order of this Court, any bank, financial or brokerage firm, futures commission merchant, or business entity, or person that holds, controls, or maintains custody of any funds, assets or other property of Defendants, controlled, or maintained custody of any funds, assets or other property of Defendants, including, but not limited, to J.P. Morgan Chase Bank, N.A., Capital One Bank, N.A., Bank of America, N.A., T.D. Bank, N.A., Wells Fargo Bank, N.A., Forex Capital Markets, L.L.C., Interbank FX, L.L.C., and Interactive Brokers, L.L.C., , and who receive notice of this Order by any means, including facsimile, electronic mail, United Parcel Service, UPS or other commercial overnight service, shall:

- a. Prohibit Defendants and any other person from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any such asset except as directed by further order of the Court;
- b. Deny Defendants and all other persons access to any safe deposit box that is:
 - i. titled in the name of Defendants, either individually or jointly; or
 - ii. maintained by nominees of Defendants; or
 - ii. otherwise subject to access by the Defendants.

II. PROHIBITION OF DESTRUCTION OF BOOKS AND RECORDS

12. **IT IS FURTHER ORDERED** that Defendants and their agents, servants, employees, successors, assigns, attorneys and all persons insofar as they are acting in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including facsimile, email or UPS or other commercial overnight service, are restrained and enjoined from directly or indirectly destroying, mutilating, concealing, altering or disposing of, in any manner, any of the books and records, documents, correspondence,

brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning the Defendants' business operations.

III. ACCESS TO AND INSPECTION OF BOOKS AND RECORDS

13. **IT IS FURTHER ORDERED** that Defendants must permit representatives of the Plaintiff CFTC to immediately inspect the books, records and other electronically stored data, tape recordings, and other documents of the Defendants and their agents, including all such records of Defendants' business operations, wherever they are situated and whether they are in the possession of the Defendants or others and to copy said documents, data, and records either on or off the premises where they may be situated and whether they are in the possession of the Defendants or others.

IV. SERVICE OF ORDER

14. **IT IS FURTHER ORDERED** that copies of this Order may be served by any means, including facsimile transmission, electronic mail, United Parcel Service and UPS or other commercial overnight service, upon any financial institution, FCM, bank, brokerage firm or other entity or person that may have possession, custody, or control of any documents or assets of the Defendants, or that may be subject to any provision of this Order. Joy McCormack and John Wilson, employees of the CFTC, are hereby specially appointed to serve process, including this Order and all other papers in this cause.

V. SERVICE ON THE COMMISSION

15. **IT IS FURTHER ORDERED** that the Defendants shall serve all pleadings, correspondence or notices required by this Order, and other materials on the CFTC by delivering a copy to, Susan B. Padove, Senior Trial Attorney or Elizabeth M. Streit, Trial Team Leader,

Division of Enforcement, Commodity Futures Trading Commission, 525 W. Monroe, Suite 1100, Chicago, Illinois 60661.

VI. COURT MAINTAINS JURISDICTION

16. **IT IS FURTHER ORDERED** that this Statutory Restraining Order shall remain in full force and effect until further Order of this Court, upon application, notice and an opportunity to be heard, and that this Court retains jurisdiction of this matter for all purposes.

VII. FURTHER COURT HEARINGS

17. **IT IS FURTHER ORDERED** that Plaintiff's Motion for a Preliminary Injunction is set for hearing on August 11, 2011 at 10:00am. before the Honorable Part I Judge at the United State Courthouse for the Southern District of New York, 300 Pearl Street, New York, New York 10007.

IT IS SO ORDERED.

Signed at 4:30 o'clock pm on the 27th day of July, 2011


UNITED STATES DISTRICT JUDGE
Southern District of New York