FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Case No. 1:05cv492 CMH/LO

COMMODITY FUTURES TRADING COMMISSION, Plaintiff, v. PRESIDENTIAL FX, INC., ADAM LEÓN, AND JOSEPH MARCHIANO Defendants.	)	Complaint for Injunctive and Other Equitable Relief and for Civil Penalties Under the Commodity Exchange Act, as Amended, 7 U.S.C. §§ 1-25

Complaint for Injunctive and Other Equitable Relief and for Civil Penalties Under the Commodity Exchange Act, as Amended, 7 U.S.C. §§ 1-25

I. SUMMARY

1. Since at least December 2003 ("the relevant period"), Presidential FX, Inc. ("Presidential"), through its employees, including, but not limited to, Joseph Marchiano ("Marchiano"), has been using high-pressure and fraudulent sales techniques, and has solicited nearly $1.9 million from at least 120 retail customers in and outside the United States to invest in options on foreign currency ("forex options").

2. During the course of these solicitations, Defendant Presidential, through its employees, including, but not limited to, Marchiano, knowingly misrepresents, and fails to disclose, material facts concerning, among other things, (i) the likelihood that a customer will realize large profits trading forex options; (ii) the risk involved in trading forex options; and (iii) Presidential's exceedingly poor performance record trading forex options on behalf of customers. By making such material misrepresentations and omissions, Presidential and Marchiano have

engaged, are engaging, or are about to engage in acts and practices that violate the anti-fraud provisions of Section 4c(b) of the Commodity Exchange Act, as amended, (the "Act"), 7 U.S.C. § 6c(b) (2002) and Sections 1.1(b)(1) and (3) and Sections 32.9(a) and (c) of the Commission's Regulations ("Regulations"), 17 C.F.R. §§ 1.1(b)(1) and (3) and §§ 32.9(a) and (c) (2004).

3. Adam León ("León") directly or indirectly controls Presidential and has not acted in good faith or has knowingly induced, directly or indirectly, the acts constituting Presidential's violations alleged in this Complaint. León is therefore liable for Presidential's and Marchiano's violations of the Act and Regulations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002).

4. Accordingly, pursuant to Section 6c of the Act, Plaintiff Commodity Futures Trading Commission ("Commission") brings this action to enjoin the unlawful acts and practices of Defendants, to bar Defendants from engaging in any commodity-related activity, including soliciting new customers or customer funds, and to compel Defendants' compliance with the Act and the Regulations. In addition, the Commission seeks civil monetary penalties in the amount of not more than the higher of $120,000 or triple the monetary gain to Defendants for each violation of the Act, disgorgement of Defendants' ill-gotten gains, restitution to customers, including prejudgment interest and such other relief as this Court may deem necessary or appropriate.

5. Unless 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

6. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which provides that, whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order promulgated thereunder, the Commission may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

7. Sections 2(c)(2)(B) and (C) of the Act, 7 U.S.C. § 2 (2002), grant the Commodity Futures Trading Commission ("Commission") jurisdiction over certain retail transactions in foreign currency that are contracts for the sale of a commodity for future delivery (or option on such a contract), and options on foreign currency, including the forex options transactions alleged in this Complaint.

8. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1, in that the Defendants transacted business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur, within this District, among other places.

III. THE PARTIES

9. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged with administering and enforcing the provisions of the Act, as amended, 7 U.S.C. §§ 1 *et seq.* (2002), and the regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2003). The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, DC, 20581.

10. Defendant **Presidential FX, Inc.** is a Florida corporation incorporated on November 10, 2003, with its principal place of business at 4000 Hollywood Boulevard, Suite 525-S, Hollywood, Florida 33021. Presidential has an active website at www.PresidentialFX.com, and the company is still soliciting customers there. Presidential was registered with the Commission as an introducing broker ("IB") from December 29, 2003 until April 8, 2004. Presidential is not currently registered with the Commission in any capacity.

11. Defendant **Adam León** is a principal of Presidential. León supervises all employee activity at Presidential, including solicitation of prospective customers and management of customer accounts. León has been registered in various capacities from June 4, 1998 through the present. León is currently registered as an associated person ("AP") of two registered IBs, Protrade Futures & Options and Royce Capital Futures and Options, Inc., but has never been registered in any capacity regarding his work at Presidential.

12. Defendant **Joseph Marchiano** resides in Pembroke Pines, Florida. Marchiano solicited customers via telephone for Presidential on at least twenty occasions from at least December 2003 until June 2004. Marchiano has never been registered with the Commission in any capacity while working at Presidential. Marchiano was registered with various entities off-and-on from 1988 through 2000.

IV. STATEMENT OF FACTS

A. The Presidential FX, Inc. Investment

13. During the relevant period, Presidential, through its employees, including, but not limited to, Marchiano, has solicited prospective customers to open trading accounts for the purpose of trading forex options contracts. Presidential also solicits prospective customers to

invest in other types of commodities-related investments, including but not limited to, off-exchange metals, such as gold options.

14. Presidential, through its employees, including, but not limited to, Marchiano, has solicited prospective customers through nationwide telephone solicitations, promotional literature, through word-of-mouth, and through a website located at www.PresidentialFX.com.

15. Presidential, through its employees, including, but not limited to, Marchiano, consistently uses high-pressure techniques to convince customers to invest. For instance, Presidential employees often call potential or existing customers daily, sometimes multiple times a day, to insist that customers send money. Presidential employees also tell potential and existing customers they must send money immediately to make high profits.

16. In sales calls, Presidential, through its employees, including, but not limited to, Marchiano, regales potential customers with claims of high-profit, low-risk trading, as well as claims of past successful trading, in an attempt to create the impression that Presidential has a successful trading record.

17. Defendants provide customers with account opening documents via the mails, including Federal Express, and via the internet at www.PresidentialFX.com.

18. If customers are interested in opening an account, they are instructed to send checks or to transfer money electronically to originally NCCI FX ("NCCI FX") and later Worldwide Clearing, LLC ("Worldwide"). NCCI FX is not registered with the Commission in any capacity, including as a futures commission merchant ("FCM"), and is not an affiliate of any registered FCM for purposes of the Act or any other type of regulated financial entity recognized under the Act. Worldwide Clearing, LLC is registered as an FCM, and has been registered throughout the relevant time period as an FCM with the Commission.

19. During the relevant period, Presidential, through its employees, including, but not limited to, Marchiano, solicited approximately $1.9 million from at least 120 customers.

20. Most, if not all, Presidential customers are retail customers who are not eligible contract participants as defined in Section 1a(12) of the Act.

21. Of the approximately 120 retail customers Presidential solicited, 116 customers – or 97% – have lost all or almost all of their investment.

22. Presidential has charged commissions ranging from 9% to 86% on the trading in each individual's account.

B. Defendants' Fraudulent Solicitation Exaggerating Likelihood of Profit

23. Throughout the relevant period, Presidential, through its employees, including, but not limited to, Marchiano, commonly exaggerates to customers the likelihood of profiting from trading forex options.

24. Marchiano has made exaggerated profit claims including, but not limited to, the following, or words to this effect:

a. that he "would double or triple [a customer's] money;"

b. that if a customer "invested over $100,000 [the customer] would make really big money;"

c. that a customer would make a "quick profit" by investing $50,000 with Presidential;

d. that he "guaranteed" a customer would make profits;

e. that the customer "would make money" by investing with Presidential; and

f. that a customer "would make profits within three months."

25. Other Presidential employees have made exaggerated profit claims, including, but not limited to, the following, or words to this effect:

a. that customers "would make a 20% profit within three months;"

b. that "within 90 days [the customer] would see a huge return;"

c. that the employee "would double [the customer's] money" in three months;

d. that Presidential employees "would fix [the customer's] account" so the customer "would make a profit;"

e. that "another investment would bring [the customer's] account back up" to the amount of the customer's original investment, then from there, Presidential employees would "double or triple" the customer's money; and

f. that a customer had to "send [his] money right away to earn quadruple profits."

26. Presidential employees were given a written script for use when soliciting customers. Using the script, Presidential employees have falsely represented that customers could make 25%, 50% or even 100% profit in sixty to ninety days trading forex options.

C. Defendants' Misrepresentations Concerning Risk of Loss

27. During the course of its fraudulent sales solicitations, Presidential, through its employees, including but not limited to Marchiano, routinely fails to disclose adequately the risk inherent in forex options trading. Defendants' occasional reference to risk is nullified by Defendants' constant pressuring of customers to invest immediately and by Defendants' false representations to customers that, while losses are possible, trading with Defendants is virtually

risk free. For example, during the relevant time period, Marchiano told customers the following, or words to this effect:

a. that it was "absolutely impossible" to lose money investing with Presidential;

b. that an investment with Presidential "was a sure thing;" and

c. that an investment with Presidential was "a sure bet."

28. Other Presidential employees falsely represent to customers that, while losses are possible, trading with Presidential is virtually risk free. For example, during the relevant time period, Presidential employees made representations, including, but not limited to, the following, or words to this effect:

a. that "investing in Euro options was a sure bet;"

b. that the customer's investment "could not go wrong;"

c. that "there was no way [the customer] could lose money" on an investment in forex options;

d. that Presidential employees were making "very safe" investments that included "very minimal risk;"

e. that there "was no chance of the market going bad;"

f. that the customer should not "worry about anything the [account opening] documents said about risk" because the risk of trading with Presidential was so low; and

g. that Presidential employees used a trading strategy that would prevent customers from losing money.

D. Defendants' Misrepresentations Concerning Past Performance

29. During the course of their solicitations, Presidential, through its employees, including, but not limited to, Marchiano, also misrepresents and overstates Presidential's overall performance record to customers. As they make exaggerated profit claims and minimize the risks of trading, Presidential employees make misleading references to overall profits Presidential achieved for its customers, thus creating the overall impression that Presidential has a successful trading record. For example, during the relevant period, Presidential employees represented the following, or words to this effect:

a. that Presidential had been getting 100% return profits for its customers, and would make the same profits for the potential customer;

b. that Presidential's gross fund made 35% returns for customers; and

c. that Presidential had turned a $4,000 investment into $20,000 within a month.

E. Defendants' Losing Performance Record

30. Between December 2003 and June 2004, Defendants never had a profitable month of trading. During this period of time, Presidential customers had realized losses totaling $1.9 million including commissions.

31. Between December 2003 and June 2004, 99.1% of customers lost money by investing with Defendants.

F. León is a Controlling Person at Presidential

32. León is responsible for the overall day-to-day operation of Presidential, including the hiring of new employees and supervising their training and their solicitations.

33. On a daily basis, León is responsible for supervising employees' management of customer accounts, solicitation of prospective customers, and employee sales presentations.

V. COMMISSION'S JURISDICTION OVER THE TRANSACTIONS AT ISSUE

34. Section 2(c)(2)(B)(i) and (ii) of the Act provides that the Commission shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a commodity for future delivery (or option thereon) or an option, so long as the contract is "offered to, or entered into with, a person that is *not* an eligible contract participant", and the counterparty, or the person offering to be the counterparty, is not one of the regulated entities enumerated in Section 2(c)(2)(B)(ii)(I-VI). 7 U.S.C. § 2(c)(2)(B)(i) and (ii).

35. Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1, defines an eligible contract participant as an individual who has total assets in excess of: a) $10 million; or b) $5 million and who enters the transaction to manage the risk associated with an asset owned or a liability incurred, or reasonably likely to be owned or incurred. Most, if not all, of the foreign currency options transactions alleged herein were offered to or entered into with persons who did not qualify as eligible contract participants, meaning that the customers of Presidential are retail customers whose transactions are contemplated by Section 2(c)(2)(B)(ii) of the Act to be within the Commission's jurisdiction.

36. Section 2(c)(2)(B)(ii)(I-VI), 7 U.S.C. § 2(c)(2)(B)(ii)(I-VI), identifies regulated entities that are proper counterparties to foreign currency transactions with retail customers, which include registered futures commission merchants ("FCMs") and certain statutorily defined affiliates of registered FCMs, which encompasses only those "affiliated" persons as to whom the FCMs are required under the Act and Commission Regulations to make and keep records.

37. Notwithstanding subclauses (II) and (III) of subparagraph (B)(ii), Section 2(c)(2)(C) of the Act provides that agreements, contracts, or transactions in retail foreign currency described in subparagraph (B) *are* subject to Sections 4b and 4c(b) of the Act if they are entered into by an FCM or an affiliate of an FCM that is not also an entity described elsewhere in subparagraph (B)(ii). 7 U.S.C. § 2(c)(2)(C).

38. NCCI FX is not one of the enumerated regulated entities identified in Section 2(c)(2)(B)(ii). In particular, NCCI FX is not registered with the Commission as an FCM and is not a material affiliate of a registered FCM for purposes of the Act, in that no registered FCMs are required under the Act or Commission Regulations to make and keep records concerning the business or activities of NCCI FX. Accordingly, NCCI FX is not is a proper counterparty to the retail forex options transactions alleged in the Complaint.

39. Since NCCI FX is not a proper counterparty and the customers are not eligible contract participants, the Commission has jurisdiction over this action with respect to those transactions with NCCI FX.

40. Worldwide is registered with the Commission as an FCM and thus constitutes a proper counterparty under Section 2(c)(2)(B) to the alleged transactions with Presidential customers, who are not eligible contract participants. However, the Commission retains anti-fraud jurisdiction over the alleged forex options transactions with Worldwide pursuant to Section 2(c)(2)C) of the Act.

VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS

COUNT ONE

VIOLATIONS OF SECTION 4c(b) OF THE ACT AND SECTIONS 1.1(b)(1) AND (3) AND 32.9(a) AND (c) OF THE REGULATIONS: FRAUD BY MISREPRESENTATION AND OMISSION OF MATERIAL FACTS IN CONNECTION WITH THE SOLICITATION AND MAINTENANCE OF FOREX OPTIONS TRANSACTIONS

41. Paragraphs 1 through 40 above are re-alleged and incorporated by reference.

42. From at least December 2003 and continuing through the present, Defendant Presidential, through its employees, and Defendant Marchiano, cheated, defrauded, or deceived other persons or attempted to cheat, defraud or deceive other persons by making false, deceptive, or misleading representations of material facts and by failing to disclose necessary material facts, including, but not limited to, those statements and omissions identified in paragraphs 13 through 33 above, all in violation of Section 4(c)(b) of the Act, 7 U.S.C. § 6c(b), and Regulations 1.1 (b) (1) and (3) and 32.9(a) and (c), 17 C.F.R. §§1.1 (b)(1) and (3), 32.9(a) and (c) (2004).

43. León, directly or indirectly, controls Presidential, and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting Presidential's violations of Section 4c(b) of the Act and Regulations 1.1(b)(1) and (3) and 32.9(a) and (c), 17 C.F.R. §§ 1.1(b)(1) and (3) and 32.9(a) and (c). León is therefore liable for these violations pursuant to Section 13(b) of the Act, 17 U.S.C. § 13c(b).

44. The foregoing acts, omissions, and failure of León, Marchiano and other Presidential employees, officials or agents occurred within the scope of each person's employment or office within Presidential. Presidential is therefore liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

45. Each material misrepresentation or omission made during the relevant time period by Marchiano and other Presidential employees, including, but not limited to, those specifically alleged herein, is a separate and distinct violation of Section 4c(b) of the Act and Regulations 1.1(b)(1) and (3) and 32.9(a) and (c).

VII. RELIEF REQUESTED

WHEREFORE, Plaintiff Commodity Futures Trading Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to the Court's equitable powers, enter:

a) An order finding that Defendants violated Sections 4c(b) of the Act and Sections 1.1(b)(1) and (3) and 32.9(a) and (c) of the Regulations;

b) A permanent injunction prohibiting:

1. Presidential FX, Inc., León, and Marchiano from engaging in conduct violative of Section 4c(b) of the Act and Sections 1.1(b)(1) and (3) and 32.9 (a) and (c) of the Regulations, and

2. Prohibiting Presidential FX, Inc., León, Marchiano, and any other person or entity associated with them from engaging in any commodity-related activity, including soliciting new customers or customer funds;

e) An order directing Presidential FX, Inc., León, and Marchiano 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 or Regulations, as described herein, and interest thereon from the date of such violations;

f) An order directing Presidential FX, Inc., León, and Marchiano to make full restitution, pursuant to such procedure as the Court may order, to every customer whose funds were received by them as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;

g) An order directing Presidential FX, Inc., León, and Marchiano each to pay a civil monetary penalty in the amount of not more than the higher of $120,000.00 ($130,000 for violations occurring after October 24, 2004) or triple the monetary gain to Defendants for each violation of the Act or Regulations; and

h) Such other and further relief as the Court deems appropriate.

Dated this 29 day of April 2005

Respectfully submitted,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Civil Action No. ________________

COMMODITY FUTURES TRADING COMMISSION, Plaintiff, v. **PRESIDENTIAL FX, INC., ADAM LEÓN, AND JOSEPH MARCHIANO** Defendants.	)	Motion for Preliminary Injunction and Other Equitable Relief

Motion for Preliminary Injunction and Other Equitable Relief

Plaintiff, Commodity Futures Trading Commission ("Commission"), applies to this Court, pursuant to Rule 65 of the Federal Rules of Civil Procedure, for a preliminary injunction enjoining Defendants Presidential FX, Inc. ("Presidential"), Adam León ("León"), and Joseph Marchiano ("Marchiano"), collectively "Defendants," from violating Section 4c(b) of the Commodity Exchange Act, as amended, 7 U.S.C. § 6c(b) (2002) ("Act"), Sections 1.1(b)(1) and (3) of the Commission Regulations ("Regulations"), 17 C.F.R. §§ 1.1(b)(1) and (3) (2004), and Sections 32.9(a) and (c) of the Regulations, 17 C.F.R. §§ 32.9(a) and (c) (2004).

In support of this motion, the Commission respectfully refers the Court to the Commission's Memorandum of Law in Support of its Motion for Preliminary Injunction ("Memorandum of Law") and exhibits filed herewith. As explained in the Commission's Memorandum of Law, since at least December 2003, Defendant Presidential, through its employees, including, but not limited to, Marchiano, has been using high-pressure and fraudulent sales techniques to solicit nearly $1.9 million from at least 120 retail customers in and outside the United States to invest in options on foreign currency ("forex options"). Defendant Presidential, through its employees, including, but not limited to, Marchiano, has knowingly misrepresented, and failed to disclose, material facts concerning, among other things, (i) the likelihood that a customer will realize large profits trading forex options; (ii) the risk involved in trading forex options; and (iii) Presidential's exceedingly poor performance record trading forex options on behalf of customers.

For the foregoing reasons, the Commission respectfully requests that the Court enter a Preliminary Injunction enjoining the Defendants from violating the Act as charged in the Complaint.

Respectfully submitted,

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