

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

MICHAEL J. SALERNO,
BLACK DIAMOND FOREX LP,
BDF TRADING LP (d/b/a Advanta FX), and
ADVANTA CAPITAL MARKETS, INC.
(d/b/a Advanta FX),

Defendants,

and

BLACK DIAMOND INVESTMENT GROUP
LLC,
ADVANTA CAPITAL MARKETS LTD., f/k/a
BLACK DIAMOND CAPITAL LTD., f/k/a
BLACK DIAMOND FOREX LTD.,

Relief Defendants.

No. 18 CV 1585

STATUTORY RESTRAINING ORDER

Plaintiff, the Commodity Futures Trading Commission (“CFTC” or “Commission”), has filed a Complaint for Permanent Injunction and Other Relief and moved, pursuant to Section 6c(a) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 13a-1(a) (2012), and in accordance with Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 65, for an *ex parte* statutory restraining order freezing assets and allowing inspection of records. The Court has considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission’s motion and finds that:

1. This Court has jurisdiction over the parties and over the subject matter of this action pursuant to Section 6c of the Act.
2. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (2012) (federal question jurisdiction) and 28 U.S.C. § 1345 (2012) (district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). Section 6c(a) of the Act authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice that violates any provision of the Act or any rule, regulation, or order promulgated thereunder..
3. The Commission has made a proper *prima facie* showing that since at least January 2017, Defendants have been fraudulently soliciting members of the public to purportedly become foreign currency (“forex”) proprietary traders in Black Diamond Forex LP, BDF Trading LP (a/k/a “Advanta FX”), and Advanta Capital Markets, Inc. (a/k/a “Advanta FX”) (collectively, the “Black Diamond Entities”) and that this conduct is ongoing. The Defendants accepted at least \$310,000 in proprietary traders’ funds from approximately 150 people and used them for purposes other than forex trading. Defendants have also destroyed documents relevant to the fraud. The Commission has also presented evidence that some or all of these funds may have been funneled into accounts at Relief Defendants Black Diamond Investment Group LLC (“BDIG”) and/or Advanta Capital Markets Ltd. (“ACMLtd”). Therefore, there is good cause to believe that Defendants have engaged, are engaging, and/or are about to engage in violations of the Act and CFTC Regulations. Specifically, it appears that

Defendants have violated Section 4b(a)(2)(A) and (C) of the Act, 7 U.S.C.

§ 6b(a)(2)(A), (C) (2012), and Commission Regulation (“Regulation”) 5.2(b)(1) and (3), 17 C.F.R. § 5.2(b)(1), (3) (2017).

4. There is also good cause to believe that Relief Defendants have received, are receiving, and are about to receive funds, assets or other property as a result of Defendants’ violative acts and practices and have been unjustifiably enriched thereby. The Relief Defendants do not have any legitimate interest or entitlement to these funds, assets or other property received as a result of Defendants’ violative conduct
5. There is also good cause to believe that immediate and irreparable harm to the Court’s ability to grant effective final relief to the defrauded investors in the form of monetary redress will occur from the withdrawal, transfer, removal, or other disposition of funds, assets or other property or destruction, alteration or disposition of books and records and other documents (“records”) by Defendants and Relief Defendants unless Defendants and Relief Defendants are immediately restrained and enjoined by order of this Court.
6. Therefore, there is good cause for the Court to freeze funds, assets or other property owned, controlled, managed or held by Defendants and Relief Defendants or in which they have any beneficial interest.
7. There is also good cause for entry of an order prohibiting Defendants and Relief Defendants from destroying, altering or disposing of records and/or denying agents of the Commission access to inspect records, when and as requested, to ensure that Commission representatives have immediate and complete access to those records.

8. In summary, this is a proper case for granting a restraining order *ex parte* to preserve the status quo, by preventing the dissipation and diversion of assets and the destruction of records. Therefore the Court orders as follows:

DEFINITIONS

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

9. The terms “funds, assets or other property” encompass any legal or equitable interest in, right to, or claim to, any real or personal property, whether individually or jointly, directly or indirectly controlled, and wherever located, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts (including, but not limited to, bank accounts and accounts at other financial institutions), credits, receivables, lines of credit, contracts (including spot, futures, options, forex or swaps contracts), insurance policies, and all funds, wherever located, whether in the United States or outside the United States.
10. The terms “documents” and “electronically stored information” are synonymous in meaning and equal in scope to the usage of those terms in Fed. R. Civ. P. 34(a), and include, but are not limited to, all writings, drawings, graphs, charts, photographs, sound recordings, images, and other data and data compilations – stored in any medium from which information can be obtained or translated, if necessary, into reasonable usable form. The terms “documents” and “electronically stored information” also refer to each and every such item in Defendants’ and Relief Defendants’ actual or constructive possession, including but not limited to: (i) all such items within Defendants’ and Relief Defendants’ custody or control of any of

present agents, employers, employees, partners, and (ii) all items which Defendants and Relief Defendants have a legal or equitable right to obtain from another person. A draft or non-identical copy is a separate item within the meaning of the terms. A document also includes the file and folder tabs associated with each original and copy.

11. “Defendants” collectively refers to Michael J. Salerno and the Black Diamond Entities.
12. “Relief Defendants” collectively refers to BDIG and ACMLtd.

RELIEF GRANTED

IT IS FURTHER ORDERED THAT:

I. Asset Freeze Order Prohibiting the Withdrawal, Transfer, Removal, Dissipation and Disposal of Assets

13. The Defendants and Relief Defendants are immediately restrained and enjoined, except as otherwise ordered by this Court, from directly or indirectly: withdrawing, transferring, removing, dissipating, or otherwise disposing of any funds, assets or other property, wherever located, including Defendants’ and Relief Defendants’ funds, assets or other property held outside the United States.
14. The funds, assets or other property affected by this Order shall include existing funds, assets or other property, or funds, assets or other property acquired after the effective date of this Order.

II. Maintenance of and Access to All Records Relating to the Business Activities and Business and Personal Finances

15. The Defendants and Relief Defendants are restrained from directly or indirectly destroying, altering, or disposing of, in any manner, any records that relate or refer to the business activities and business and personal finances of any Defendants or Relief Defendants.
16. Representatives of the Commission shall be immediately allowed to inspect the records relating or referring to the business activities and business and personal finances of the Defendants and Relief Defendants, including, but not limited to, both hard-copy documents and electronically stored information, wherever they may be situated and whether they are in the possession of the Defendants or Relief Defendants or others. To facilitate meaningful inspection and review, Defendants and Relief Defendants shall allow representatives of the Commission to make copies of said documents and electronically stored information, and if on-site copying of documents and electronically stored information is not practicable, representatives may make such copies off-site. After any such offsite copying, Plaintiff shall promptly return the original documents and devices upon which electronic information is stored.
17. To further facilitate meaningful inspection and review, Defendants and Relief Defendants shall, absent a valid assertion of their rights against self-incrimination under the Fifth Amendment, promptly provide Commission staff with:
 1. the location of all records relating or referring to the business activities and business and personal finances of the Defendants and Relief Defendants;

2. all identification numbers and other identifying information for websites, cloud storage services, email and smartphone accounts, and all accounts at any bank, financial institution or brokerage firm (including any introducing broker futures commission merchant or retail forex dealer) owned, controlled or operated by Defendants and Relief Defendants, or to which the Defendants and Relief Defendants has/have access; and
3. all passwords to, and the location, make and model of, all computers and/or mobile electronic devices owned and/or used by Defendants and Relief Defendants in connection with his/their business activities and business and personal finances.

When inspecting records that are subject to this Order, including those contained on computer(s) and/or other electronic device(s), the Commission should undertake reasonable measures to prevent review of the Defendants' or Relief Defendants' privileged communications by the Commission's attorneys and other staff who are part of the litigation team in this matter. Moreover, Defendants and Relief Defendants or their counsel shall promptly contact Plaintiff's counsel to assert any claims of privilege or other legal objections relating to the contents of any records that are subject to this Order and promptly cooperate with Plaintiff's counsel to develop reasonable protocols to isolate and prevent disclosure of claimed privileged and/or other nonbusiness, nonfinancial materials to the Commission's attorneys and other staff who are part of the litigation team in this matter. However, nothing herein shall excuse Defendants and Relief Defendants from full and immediate compliance with this Court's Order permitting Plaintiff to inspect the books and records which

relate to Defendants' or Relief Defendants' business activities and their business and personal finances

III. Notice to Financial Institutions and Others That Hold or Control Assets or Records

18. To ensure the effectiveness of the asset freeze and pending further Order of this Court, any financial or brokerage institution, business entity, or person that receives actual notice of this Order and holds, controls, or maintains custody of any account or asset owned by, held for the benefit of, or otherwise under the control of any Defendants or Relief Defendants, shall not, in active concert or participation with Defendants or Relief Defendants, permit Defendants or Relief Defendants, or other persons to withdraw, transfer, remove, dissipate, or otherwise dispose of Defendants' or Relief Defendants' funds, assets, or other property, except as directed by further order of the Court.
19. Any financial or brokerage institution, business entity, or person that receives notice of this Order by personal service or otherwise shall not, in active concert or participation with any Defendant or Relief Defendant, directly or indirectly destroy, alter or dispose of, in any manner, any records relating to the business activities and business and personal finances of any Defendant or Relief Defendant.
20. Any financial or brokerage institution, business entity, or person that receives actual notice of this Order and holds, controls, or maintains custody of any account or asset titled in the name of, held for the benefit of, or otherwise under the control of Defendants or Relief Defendants, or has held, controlled, or maintained custody of any such account or asset of Defendants or Relief Defendants at any time since October 1, 2016 shall not, in active concert or participation with Defendants or Relief

Defendants , deny a request by the Commission to inspect all records pertaining to every account or asset owned, controlled, managed or held by Defendants or Relief Defendants, or managed or held on behalf, or for the benefit, of Defendants or Relief Defendants, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. As an alternative to allowing inspection of records, a financial or brokerage institution, business entity or other person may provide copies of records requested by the Commission.

IV. Persons Bound By this Order

21. This Order is binding on any person who receives actual notice of this Order by personal service or otherwise and is acting in the capacity of an officer, agent, servant, employee, or attorney of the Defendants or Relief Defendants, or is in active concert or participation with the Defendants or Relief Defendants.

V. Bond Not Required of Plaintiff

22. As Plaintiff Commission has made a proper showing under Section 6c(b) of the Act, 7 U.S.C. 13a-1(b) (2012), it is not required to post any bond in connection with this Order.

VI. Service of Order

23. Copies of this Order may be served by any means, including via email or facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any records or assets of any Defendant or Relief Defendant, or that may be subject to any provision of this Order.

24. Elizabeth M. Streit, Barry Blankfield and Joy McCormack are specially appointed by the Court to effect service.

VII. Service on the Commission

25. The Defendants and Relief Defendants shall comply with all electronic filing rules and requirements of the U.S. District Court for the Eastern District of Pennsylvania , and shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to Elizabeth M. Streit, Chief Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 525 West Monroe Street, Suite 1100, Chicago, Illinois 60661, by electronic filing, e-mail, personal delivery or courier service (such as Federal Express or United Parcel Service) and not by regular mail due to potential delay resulting from heightened security and decontamination procedures applicable to the Commission's regular mail.

VIII. Further Proceedings

26. Plaintiff's Motion for a Preliminary Injunction is set for hearing on **May 1, 2018**, at **2 P.M.**, before the Honorable Cynthia M. Rufe, Courtroom **12A** at the United States Courthouse for the Eastern District of Pennsylvania, James A. Byrne U.S. Courthouse 601 Market Street Philadelphia, PA 19106. All parties must appear personally, and counsel should be prepared to present relevant testimony and evidence.
27. Should any party wish to file a memorandum of law or other papers concerning the issuance of a preliminary injunction against the Defendants or Relief Defendants, such materials shall be filed, served and received by all parties at least two (2) days before the hearing ordered above.

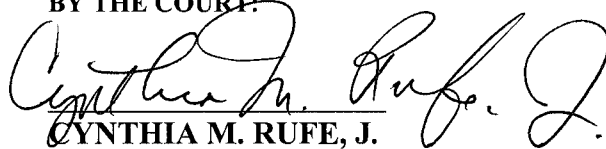
IX. Force and Effect

28. This Order shall remain in full force and effect until fourteen days from the effective date of this Order unless extended further by order of this Court pursuant to Fed. R. Civ. P. 65(b)(2), and this Court retains jurisdiction of this matter for all purposes.

IT SO ORDERED, at Philadelphia, Pennsylvania on this 17th day of April

2018.

BY THE COURT:


CYNTHIA M. RUFÉ, J.