



U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of Proceedings

PAUL CONNOLLY,
Complainant,

v.

GREGORY COTTER, and
TRI GLOBAL FX, INCORPORATED,
Respondents.

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CFTC Docket No. 09-R27

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INITIAL DECISION

Before: Philip V. McGuire, Commodity Futures Trading Commission.¹

Appearances: Steven Berk, Esq., Washington, D.C., for complainant Paul Connolly.
Michael Norton, Esq., New York, NY, for respondents
Gregory Cotter and Tri Global FX.

Introduction

Paul Connolly's principal allegation is that Greg Cotter, the principal trader and sole owner of Tri Global FX, Incorporated, a commodity trading advisor, allowed Connolly's entire account balance to be rapidly wiped out over three days by recklessly deviating from a promised "conservative" loss-limiting trading strategy which Cotter had presented to Connolly as based on close monitoring of the account, utilization of stop-loss orders and moderate trading leverage, avoidance of overnight exposure, and staying on the sideline during periods of unusually high volatility. Connolly also alleges that Cotter fraudulently induced him to open a

¹ Before being transferred to my docket, this proceeding had been on the dockets of Judges George Painter and Bruce Levine.

managed forex account by promising steady returns based on: false and misleading marketing materials, a false track record of success, and false promises to utilize a conservative, loss-limiting trading strategy. Cotter seeks to recover his entire lost investment of £160,000.²

In reply, Cotter has based his defense almost exclusively on the bare assertion that his firm Tri Global FX had nothing to do with Connolly's forex account, and that it was another firm that purportedly had traded Connolly's account: an unregistered firm called "TGFX," also owned and controlled by Cotter. As explained below, after carefully reviewing the parties' documentary submissions and oral testimony, it has been concluded that Connolly has shown by a preponderance of the evidence: that, although Cotter may have incorporated a separate firm called TGFX, Inc., that firm that had nothing to do with Connolly's forex account; that in his written and verbal dealings with Connolly and forex dealer Dukascopy during the relevant time Cotter used "TGFX" and "Tri Global FX" interchangeably to refer to the same firm; that Cotter and Tri Global FX managed Connolly's Dukascopy forex account; and that Cotter and Tri Global FX recklessly deviated from the promised strategy proximately causing damages totaling \$221,909.³

This conclusion reflects my determination that Connolly produced testimony that was plausible when viewed in light of the surrounding factual circumstances, that was internally consistent, and that was notably more credible and convincing than Cotter's testimony.⁴ In

² In this initial decision, currency amounts are rounded to the nearest U.S. Dollar and British Pound. Based on a historical exchange rate of 2.0273 on December 7, 2007, the date of Connolly's deposit, the U.S. Dollar equivalent of Connolly's £160,000 deposit on that date was \$324,368. See <http://www.oanda.com/currency/historical-rates>.

³ The damage calculation is based on Connolly's losses after October 21, 2008, when the reported account balance was £129,122. See Dukascopy October 29, 2008 portfolio statement, Connolly's trial exhibit 22. Based on a historical exchange rate of 1.7186 on October 22, 2008, the date of the initial catastrophic loss, the dollar equivalent of Connolly's £129,122 losses is \$221,909. See <http://www.oanda.com/currency/historical-rates>.

⁴ Although Connolly produced a significantly more credible version of events, he did not produce sufficient evidence to establish by a preponderance of the evidence that the representations of Cotter's experience or past

sharp contrast, the Cotter produced testimony that was opaque, evasive and largely unsubstantiated by any reliable documentary evidence. Cotter's core assertion that his firm Tri Global FX had nothing to do with Connolly's forex account, a continuation of his dodges and evasions in the immediate aftermath of Connolly's catastrophic losses, was patently self-serving and specious, and contradicted by reliable evidence.⁵

Factual Findings

The Parties

1. Paul Connolly is an Irish resident of England. On his account application, Connolly stated that he had been born in 1958, and that his profession was real estate investor. Connolly had no previous forex or derivatives experience.

2. Dukascopy Bank SA, a Swiss forex dealer at the relevant time, offered currency and precious metals trading to retail and institutional clients. Conrad D'Souza was Connolly's primary contact at Dukascopy. Neither Dukascopy nor D'Souza has ever been registered with the NFA.

performance statements in the Tri Global marketing materials were false. In this connection, the record strongly suggests that Cotter may well have violated the Commodity Exchange Act and Commission rules by soliciting Connolly's managed account before Cotter and Tri Global had become registered, and by soliciting and trading Connolly's managed account before Cotter delivered a CTA disclosure document. However, Connolly never specifically alleged those particular violations.

⁵ Cotter was represented by a different attorney when he raised this primary defense in his answer to Connolly's complaint. However, his current attorney, hired before the hearing, continued to press this defense. See ¶ 1, respondents' prehearing memorandum. This defense was not the only specious and evasive assertion made by Cotter in this proceeding. For example, in November 2007, in order to convince Connolly to open a managed forex account, Cotter had sent Connolly copies of a couple of then recent articles in *Currency Trader Magazine* that reported the purported trading success of Tri Global. After filing his reparations complaint, in several submissions, Connolly mistakenly called the magazine *Currency Magazine*. However, the context of the factual circumstances set out in each submission unambiguously established that Connolly was actually referring to the articles in *Currency Trader Magazine* touted by Cotter. Nonetheless, in his motion to dismiss filed while this case was before Judge Painter, rather than directly address Connolly's allegations regarding the representations about past performance in those articles, Connolly chose simply to assert facetiously that he was not familiar with a magazine called *Currency Magazine*. Thus, Cotter used a narrow technical truth to foster a broader material dodge and deception.

At the recommendation of respondent Gregory Cotter, Connolly would select Dukascopy as his forex broker. *See* November 2, 2007 e-mail from Cotter to Connolly (Connolly's prehearing exhibit 5). On or about November 8, 2007, Connolly would electronically sign and execute various Dukascopy account-opening documents, including a request for opening of an account, limited power of attorney, fees agreement, risk disclosure statement, and a marketplace trading agreement.⁶ Connolly would fund his Dukascopy account on December 5, 2007, and maintain the account until October 24, 2008, when the account balance would be completely wiped out by catastrophic trading losses.

Soon after Connolly's account had been wiped out, Dukascopy confirmed to Connolly that all trades in his forex account had been selected and placed by Tri Global. *See* Gianluca Flammia e-mail to Connolly dated October 28, 2008. [Unnumbered attachment to original complaint]. Dukascopy also confirmed to Connolly that there had been "no technical issue[s] related to the trades effectuated by your attorney (Tri Global FX) on your account." *See* Alain Bryon e-mail to Connolly dated October 29, 2008. [Unnumbered attachment to original complaint.]

The \$50 per contract commission ("interbank fee charge") charged to Connolly's account was split 50/50 between Dukascopy and Tri Global. *See* December 19, 2007 e-mail

⁶ On this record it cannot be conclusively established exactly how Connolly accessed the Dukascopy account-opening documents. In his November 2, 2007 e-mail to Connolly, Cotter advised Connolly he could access the Dukascopy account-opening documents at Tri Global's website. However, on November 5, 2007, D'Souza advised Connolly to access the Dukascopy account-opening documents at Dukascopy's website, and on November 6th e-mailed account-opening instructions. In any event, it is clear that Cotter and D'Souza were coordinating efforts during the account-opening process. Also, Cotter has not disputed that the undated and unsigned facsimiles of the Dukascopy and Tri Global account-opening documents produced for this proceeding by Connolly were the versions signed and executed by Connolly.

from Cotter to D'Souza. [Unnumbered attachment to Connolly's responses to Cotter's discovery requests.]

3. Tri Global FX, Incorporated ("Tri Global"), a New York firm, at the relevant time was located in Roslyn Heights, New York. Tri Global applied for registration as a commodity trading advisor in July 2007, but its registration was not approved until December 2007. Therefore, Tri Global's registration application was still pending when Cotter solicited Connolly in November 2007. Tri Global's registration was terminated in March 2010.

In April 2007, Tri Global and Dukascopy entered into an External Asset manager Agreement, under which Tri Global agreed to introduce prospective customers to Dukascopy "with a view to managing their assets." [Respondents' answer.] As noted above, Tri Global and Dukascopy each took a 50 percent split of the commission revenue from Connolly's account.

Respondents did not seek production of any corroborating documents, affidavits or oral testimony from Dukascopy or D'Souza. In contrast, Connolly sought and obtained from Dukascopy written confirmations that Cotter had used TGFX as an acronym for Tri Global in all of his dealings with Dukascopy, and that it was Tri Global and Cotter who had managed Connolly's forex account.

4. Gregory Cotter was Connolly's and Dukascopy's primary contact at Tri Global. As described below, Cotter actively coordinated with Dukascopy's D'Souza the account-opening process for Connolly account. In sharp contrast, after the massive losses on October 22 and 24, 2007, Cotter evaded Connolly's repeated requests to provide an explanation for the losses. Cotter never would provide a meaningful explanation.

During the relevant time frame, Cotter was a registered associated person with Tri Global from December 21, 2007 to March 7, 2010. Cotter applied for registration on August 14, 2007. Therefore, his registration was pending when he solicited Connolly's account. Cotter currently is not registered.

5. Cotter was the president and sole principal of Tri Global. In this connection, Cotter's signature closing in all of his e-mail exchanges with Connolly and Dukascopy read:

Gregory Cotter
President
Tri Global FX

Similarly, Cotter's e-mail address that he used in all e-mail exchanges with Connolly and Dukascopy was "<info@triglobalfx.com>."

6. On an unknown date, Connolly accessed from Tri Global's web site a Tri Global CTA Disclosure Document dated March 18, 2008, and titled "Disclosure Document of Tri Global FX, Inc." The introduction and discussion of the disclosure document identified Tri Global FX as the "Advisor," and identified Cotter as the president and head trader for Tri Global FX. The disclosure document did not contain a single reference to an entity called "TGFX." Rather it exclusively referred to Tri Global FX

Cotter has not produced any evidence that Tri Global ever produced an earlier version of its CTA Disclosure Document, or provided to Connolly such earlier version of a CTA Disclosure Document before Connolly opened his account in November 2007.

7. In November 2007, Cotter provided Connolly the following Tri Global account-opening documents to be electronically signed and executed: a managed account agreement, a limited trading authorization, a fee payment authorization, and a privacy statement. These

documents did not contain a single reference to an entity called “TGFX.” Rather, these documents exclusively referred to Tri Global FX:

- The account-opening instructions directed new clients to return signed documents to Tri Global FX, at its Roslyn Heights, New York address.
- The managed account agreement was titled “Tri Global FX Inc. Managed Account Agreement,” identified Tri Global FX Inc. as the “Advisor,” and designated Gregory Cotter as authorized to sign the agreement on behalf of Tri Global FX Inc.
- The limited trading authorization and power of attorney identified Tri Global FX Inc. as the “Advisor” to be granted the trading authority.
- The fee payment authorization authorized the brokerage firm to deduct and remit advisory and management fees to Tri Global FX Inc.

[Part 1 of Exhibit C, respondents’ reply to Connolly’s second request for production of documents number 5.]

8. As noted above, Cotter provided Connolly a Tri Global FX CTA disclosure document and Tri Global FX account-opening documents. In other words, he did not provide Connolly a “TGFX” CTA disclosure document or “TGFX” account-opening documents.⁷

Similarly, in his direct dealings with Connolly, Cotter routinely held himself out as associated with Tri Global FX, and rarely used the term “TGFX.” For example, in his introduction letter sent to Cotter on November 2, 2007, Cotter offered: “[I]f you are interested in an investment in the forex market, we ask that you consider Tri Global FX.” [Underlining added for emphasis. Connolly’s Hearing Exhibit 5.]

⁷ Cotter did own and control a New York firm called TGFX, which he claimed “was formed by Tri Global for the single purpose of trading activities with Dukascopy.” ¶ 10 respondents’ motion to dismiss filed April 16, 2010. *See also* ¶ 2, Cotter affidavit filed December 10, 2010. However, this claim cannot be squared with Cotter’s failure to offer any explanation for the repeated references to Tri Global FX in his various communications with Connolly, or with the dearth of any references to “TGFX,” in the written materials that Cotter sent to Connolly or in Cotter’s e-mails to Connolly.

Those isolated times that Cotter did use the term “TGFX,” he clearly used it as an acronym for Tri Global FX. For example, the introduction to the Trading Advisory Agreement that Cotter provided Dukascopy read “Tri Global FX Inc. (TGFX), a New York corporation, is entering into an agreement with [firm name] corporation, regarding the trading of managed accounts.” Also, in the first sentence of the “Tri Global FX Inc. Privacy Policy” statement, TGFX was explicitly used as an abbreviation for Tri Global FX Inc.: “Pursuant to Commodity Futures Trading Commission (CFTC) new rules, financial institutions like Tri Global FX Inc. (TGFX) are required to provide privacy notices to their clients.”

9. Not surprisingly, Dukascopy considered Tri Global FX to be the firm that was managing Connolly’s account, and considered TGFX to be no more than an acronym for Tri Global FX.

First, on November 6, 2007, four days after Cotter had sent his introduction letter to Connolly, Conrad D’Souza of Dukascopy e-mailed Connolly account-opening instructions and a link to Dukascopy’s account-opening documents with the following transmittal message: “Tri Global fx [sic] contacted me saying that you would be interested in opening a managed account with us.” [Underlining added for emphasis. Connolly’s Hearing Exhibit 12.]

Second, in an e-mail to Connolly on August 27, 2009, Dukascopy’s legal department confirmed:

With reference to your request, we can confirm to you that:

“TCFX Inc”. as mentioned in the attached Power-of-Attorney signed by you does designate the company Tri Global FX, Inc.

Mr. Gregory Cotter was known by Dukascopy (Suisse) SA as President of TriGlobal FX Inc and acted towards Dukascopy (Suisse) on behalf of TriGlobal FX Inc.”

Regarding Forex trades executed on your account, TriGlobal FX, Inc. was registered with Dukascopy (Suisse) SA as the Authorized Trader.

Therefore, from our point of view, your account was managed by TriGlobal FX Inc.

[Underlining added for emphasis. Connolly's Hearing Exhibit 1.]

Third, in an e-mail to Connolly on November 10, 2009, Dukascopy's Director Alain Bryon and Administrator Bogdan Prensilevich confirmed that it in its dealings with Cotter and Tri Global, Dukascopy considered TGFX and Tri Global to be one and the same:

According to your request and as already indicated to you several times, Dukascopy (Suisse) SA considers that TGFX Inc. (as mentioned in Trading Power-of-Attorneys signed by you) correspond[s] to the company Tri Global FX Inc.

Dukascopy (Suisse) SA never had any relationship with the company TGFX Inc.

Moreover, we inform you that the commissions paid by Dukascopy (Suisse) SA to Tri Global FX Inc. related to your account (USD 31'923.96) were paid to the following bank account:

Tri Global FX

ABA #-----

JP Morgan Chase

Therefore, from the point of view of Dukascopy (Suisse) SA your account U-----
----- was managed by Tri Global FX Inc. duly represented by its president Mr. Gregory Cotter."

[Underlining added for emphasis. Connolly's Hearing Exhibit 4.]

Fourth, Dukascopy reiterated this in a letter, dated July 5, 2010, from its CFO and CEO to Connolly's lawyer:

We revert [sic] to you regarding your letter dated 28 June 2010 related to the above mentioned subject.

According to your request and as already indicated to Mr., Connolly several times, Dukascopy Bank SA (hereinafter "Dukascopy") considers that TGFX Inc. was an abbreviation used to designate the company Tri Global FX Inc. and that Mr. Connolly's account UIN 36MxwWHIVn - ID 12553 was managed by Tri Global FX Inc. duly represented by its president Mr. Gregory Cotter.

To support Dukascopy's point of view, we inform you that activation email sent by Dukascopy to communicate the login details to access Dukascopy's trading system had been sent to info@triglobalfx.com.

Commissions paid by Dukascopy (USD 31'923.96) in relation with Mr. Connolly's account were paid to the following bank account:

Tri Global FX

ABA #-----

JP Morgan Chase

Dukascopy never had any relationship with the company TGFX Inc.

[Underlining added for emphasis. Connolly's Hearing Exhibit 1.]

10. Paresh Kiri, an acquaintance of Connolly, suggested in November 2007 that he consider a forex account managed by Tri Global. *See* Connolly testimony, at pages 42-43 of hearing transcript; and Connolly e-mail to info@triglobalfx.com ("Paresh tells me you are very good at what you do."). [Connolly's Hearing Exhibit 5.] Neither side called Kiri as a witness.

A year later, in late October 2008, after Cotter had failed to respond to Connolly's multiple attempts to discuss the catastrophic losses on October 22 and 24, 2008, Kiri e-mailed Cotter urging him to answer Connolly's questions: "I do not believe Paul to be unreasonable in asking the questions he asks and [your ignoring his questions] certainly makes me look like a poor judge of character to introduce him to you." [Kiri e-mail to Cotter dated October 28, 2008 (Exhibit E, Cotter's reply to Connolly's motion for second amended complaint, Exhibit E); *see also* Kiri e-mail to Cotter dated October 30, 2008 (Unnumbered attachment to original complaint).]

The solicitation and account opening

11. As noted above, sometime in the fall of 2007, Connolly's acquaintance Paresh Kiri suggested that he consider a forex account managed by Tri Global. On or about November 2, 2007, Connolly submitted an inquiry to info@triglobalfx.com.

In response to his inquiry, Cotter sent Connolly a letter of introduction, in which Cotter provided information regarding Tri Global FX and its Metro Forex trading system, and directed Connolly to Tri Global FX's website:

Please allow us to introduce our company to you. We are recommended forex asset managers for financial institutions, high net worth individuals, hedge funds, etc., and now we would like to add you to our client base. We are recommended forex asset managers for financial institutions, high net worth individuals, hedge funds, etc., and now we would like to add you to our client base....

Attached are the August and September articles from Currency Trader Magazine that highlight the Barclays' ranking of one of our retail managed account programs, Metro Forex Inc., as #1 for the \$1MM to \$10MM asset class. We manage both retail and institutional assets and look forward to discussing your situation with you....

My senior traders and I have each been trading in the foreign currency markets, and only these markets, for over 20+ years and for some of the largest financial institutions in the world, such as: Societe Generale, Credit Suisse, Barclays, Merrill Lynch, etc. Allow us to apply our expertise and experience for you, and here is a link that explains more about us: <http://www.triglobalfx.com/ourfirm>

Thus, if you are interested in an investment in the forex market, we ask that you consider Tri Global FX. We are experienced, successful and reputable foreign currency asset managers with verifiable results and excellent references. Our Managed Accounts Program is only available through one of the recommended forex brokers shown on our web site. For an account of this size we recommend you utilize Dukascopy and their account opening documents are shown on our web site. We have copied Conrad-D'Souza of Dukascopy on this email so that he may expect to see your account opening documents soon.

[Underlining added for emphasis. Connolly's Hearing Exhibit 5].

In this connection, Cotter also sent various marketing materials, including the October 2007 issue of the Barclay Institutional Report, in which Cotter described the Metro Forex “Trading Method” for Tri Global FX managed accounts:

METRO FOREX’s multi-disciplined approach involves a blend of fundamental and automated technical techniques. Asset allocations are determined by our trading committee according to planned risk parameters and reward expectations. We seek to minimize risk while still trying to maintain high portfolio returns. Trades are supported by stop-loss orders and risk management software. Tri Global FX normally seeks to profit from short term positions that may last for a few days or close intra-day. While they appreciate long-term trends and are always aware of them, they prefer to have many scaled-in positions rather than a large one-sided transaction. While Tri Global FX's traders bring proprietary systematic analysis to their trading, they should be classified as discretionary traders, since they believe that the two are not mutually exclusive and actually complement each other and neither should be ignored. Typically Tri Global FX's traders use only moderate trading leverage between 1:1 and 10:1 for most trades and usually at the lower end of the range. The goal is to minimize return volatility.

[Underlining added for emphasis. Connolly’s Hearing Exhibit 22.]

12. After exchanging e-mails with Cotter on November 5, 2007, Connolly opened a managed account. [Connolly’s Response to Cotter’s Document Requests.] During another e-mail exchange on November 15, 2007, Cotter guided Connolly through opening the managed account. [Connolly’s Response to Cotter’s Document Requests.] Connolly signed and executed the following Tri Global FX account-opening documents: a managed account agreement, a limited trading authorization, a fee payment authorization, and a privacy statement. Connolly signed and executed the following Dukascopy account-opening documents: marketplace trading agreement, limited power of attorney and risk disclosure statement. On December 7, 2007, Cotter asked Connolly if he had sent funds to Dukascopy,

and Connolly confirmed that he had wired £160,000 to Dukascopy. [Unnumbered attachment to Connolly's original complaint.]

13. In discovery, Cotter produced the Tri Global FX commodity trading advisor disclosure document, which was dated March 18, 2008, well after Connolly had opened the account managed by Cotter and Tri Global FX. The Tri Global FX disclosure document featured a performance chart which claimed: one, that Cotter had begun trading his "Metro" forex trading system in 2005; two, that Cotter traded for eight accounts, none of which had been closed; three, that Cotter had almost \$16 million in assets under management; four, that Cotter's worst and only monthly drawdown had been 0.4% in February 2005; and five, that Cotter had realized annual rates of return of 17.36%, 46.94% and 46.78%, in 2005, 2006 and 2007 respectively.

The Tri Global FX Disclosure Document described Cotter's trading strategy as follows:

The Advisor's Metro Forex trading asset management program is designed for sophisticated investors. Although the risk of loss exists in Forex trading, the objective of the Advisor is to achieve consistent and above average returns on its assets under management through trading and speculation in Forex trading. No assurance can be given that this objective will be met, and an investment in an account to be traded by the Advisor should only be considered by investors that can assume the significant risk of such trading, including losses in excess of their initial investment. The Advisor will attempt to meet the objective of capital appreciation by making trading decisions based upon both fundamental and proprietary trading methods...

The trading systems of the Advisor draw upon the judgment, experience and knowledge of the fundamental and technical factors affecting various markets and attempts to identify optimal trading opportunities within these markets. The Advisor will generally employ an approach that utilizes both fundamental and technical methods when deciding to take positions in the Forex trading. The approach can generally be classified as fundamental in nature, although other methods can be employed by the Advisor. The Advisor will seek to exploit perceived market inefficiencies in the price of selected Forex trading contracts through both long and short positions. The Advisor has no set policy with respect

to the time horizons of its long or short positions, but places an emphasis on the short-term time frame. Positions are occasionally held overnight. In evaluating the various factors which make up a trading decision, the systems pay close attention to each trade's risk-reward potential, how it fits into the risk profile of the entire portfolio, and whether it adheres to the account's overall trading goals.

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The primary focus of the Advisor's trading program is in the spot Forex trading primarily in the G-7 currencies (United States, Japan, Germany, France, United Kingdom, Italy and Canada), Forex trading markets, although the Advisor has sole discretion as to which spot Forex trading contracts it will trade.

[Part 1 of Exhibit C, respondents' reply to Connolly's second request for production of documents number 5.]

Trading Activity

14. Both sides produced minimal evidence, such as account statements or summaries, concerning the trading activity before the large losses in October 2008.

On February 6, 2007, Cotter sent Connolly an e-mail indicating that the first month of trading had been profitable:

I am sure you saw the January results in your Dukascopy account by now, and we trust that you are pleased so far.

When we spoke last time you said that you would consider increasing your investment, if you were pleased with the results.

We look forward to hearing from you again soon.

[Unnumbered attachment to Connolly's original complaint.]

Connolly has indicated that Cotter sometimes stayed on the sideline during times of market volatility, but has not specified when. In any event, by October 16, 2008, the account

balance had declined by almost £20,000, from £160,000 to £140,153. *See* Dukascopy portfolio statement dated October 29, 2008. [Connolly's Hearing Exhibit 19.]

15. On October 21, 2008, £10,914 in trading losses and charges reduced the account balance to £129,122. Despite this loss, Cotter did not appear to alter his trading strategy.

On October 22, 2008, £47,267 in trading losses and charges reduced the account balance to \$81,855. On October 23, 2008, £4,632 in modest trading profits temporarily increased the account balance to £86,488. However, on October 24, 2008, £86,733 in trading losses and charges wiped out the account, resulting in a negative balance of £246. *See* Dukascopy portfolio statement dated October 29, 2008. [Connolly's Hearing Exhibit 19.]

Aftermath

16. On or about October 24, 2008, Connolly first tried phoning Cotter at the Tri Global office, but no one answered the phone. After a couple of days, Connolly reached Cotter who asserted vaguely that Dukascopy technical problems had caused the large losses and that Connolly should direct his questions to Dukascopy. After Dukascopy informed Connolly that it had not experienced any technical problems in connection with his account, Cotter dodged repeated follow-up inquiries from Connolly for a more complete explanation.⁸ [Connolly e-mail to D'Souza, dated October 26, 2008 (Cotter's Answer to Connolly's Motion for 2nd Amended Complaint Exhibit "E"); Connolly e-mails to Cotter, dated October 27, 28, 29 and 30, 2008 (Unnumbered attachments to Connolly's original complaint); Kiri e-mail to Cotter, dated October 28, 2008 (Exhibit E, Cotter's Answer to Connolly's Motion for 2nd Amended

⁸ At the hearing, Cotter asserted, for the first time in this proceeding, that an unknown number of the trades in Connolly's account had been placed by Dukascopy. This assertion was particularly unconvincing and preposterous in light of the total absence of any disclosure to Connolly at the relevant time the fact that Dukascopy would be co-managing his account with Tri Global FX.

Complaint) ; Connolly e-mail to Broyon (Dukascopy) dated October 29, 2008 (Unnumbered attachment to Connolly's original complaint); and Broyon (Dukascopy) e-mail to Connolly dated October 29, 2008 (Unnumbered attachment to Connolly's original complaint).]

Conclusions

Connolly has shown by a preponderance of the evidence that Cotter used "TGFX" and "Tri Global FX" interchangeably to refer to the same firm, in his written and verbal communications and dealings with Connolly and forex dealer Dukascopy at the relevant time, and that it was Cotter and Tri Global FX that managed Connolly's Dukascopy forex account. Cotter's insistence that his firm Tri Global FX had nothing to do with Connolly's forex account was patently self-serving and specious, and contradicted by reliable evidence. For example, Dukascopy repeatedly confirmed that Cotter had used "TGFX" as an acronym for Tri Global in all of his dealings with Dukascopy, that Dukascopy had a contractual relationship with Cotter and Tri Global FX, that all trades in Connolly's forex account had been selected and placed by Cotter and Tri Global FX, that Tri Global FX and Dukascopy had split commissions charged to Connolly's account, and that Dukascopy made all related payments to a Tri Global FX bank account. Dukascopy's confirmations were consistent with Cotter's written communications with Connolly, where he clearly held out Tri Global FX as the firm that was dealing with Connolly and that would be trading for Connolly. Unfortunately, Cotter's unsubstantiated and ultimately absurd assertion that his firm Tri Global FX had nothing to do with Connolly's forex account appears to be no more than a continuation of his various disingenuous dodges in the immediate aftermath of Connolly's catastrophic losses.

The fact that, during the first ten months of trading the account, the £20,000 in aggregate losses represented no more than about one-eighth of Connolly's investment supports the conclusion that before the catastrophic losses on October 22 and 24, 2008, Cotter appeared to have stuck to his promised trading strategy of using stop-loss orders, moderate leverage and other tactics to limit the size of losses. Then, on October 21, 2008, £10,914 in trading losses and charges reduced the account balance to £129,122. Despite the fact that this loss -- significant relative to previous losses -- should have signaled caution, Cotter has produced no evidence that he took any reasonable protective steps to minimize further losses. Next, on October 22, 2008, £47,267 in trading losses and charges, which represented 25% of Connolly's investment, reduced the account balance to \$81,855. In connection with these trades, Cotter also has produced no evidence that he took any reasonable steps to minimize further losses consistent with the promised conservative trading strategy. On October 23, 2008, £4,632 in modest trading profits temporarily increased the account balance to £86,488. However, on October 24, 2008, £86,733 in trading losses and charges, representing over 50% of Connolly's investment, wiped out the account, resulting in a negative balance of £246. In connection with these trades, Cotter again has produced no evidence that he took any reasonable steps to minimize further losses consistent with the promised trading strategy. The disproportionately large size of these losses in relation to the previous losses over the first ten months supports the rebuttable presumption that Cotter had recklessly deviated from the loss limiting strategy that he had previously utilized and that he had promised he would follow when he convinced Connolly to open a forex account and give Cotter and Tri Global FX discretionary authority to trade pursuant to the approved loss-limiting trading strategy. Despite the fact that Cotter was in the

best position to produce relevant records from Tri Global FX and Dukascopy to explain and justify his trading strategy in October 2008, Cotter chose to offer neither records nor explanation. Rather, Cotter chose to rely exclusively on the specious claim that his firm Tri Global FX had nothing to do with the trading in Connolly's account. By failing to produce a scintilla of evidence regarding his trading strategy in October 2008, Cotter has failed to rebut the presumption that he had recklessly deviated from the approved conservative loss-limiting trading strategy.

Cotter's breach constituted a violation of Section 4o(1)(B) of the Commodity Exchange Act.⁹ The proper measure of damages proximately caused by this violation is Connolly's out-of-pocket losses after October 21, 2008, when the reported account balance was £129,122. Based on a historical exchange rate of 1.7186 on October 22, 2008, the date of the initial catastrophic loss, the dollar equivalent of Connolly's £129,122 loss is \$221,909.¹⁰

ORDER

Paul Connolly has established by a preponderance of the evidence that Gregory Cotter violated Section 4o(1)(B) of the Commodity Exchange Act, that this violation proximately caused damages totaling \$221,909, and that Tri Global FX, Incorporated is liable for Cotter's fraud pursuant to Section 2(a)(1)(B) of the Act. Accordingly, Gregory Cotter and Tri Global FX, Incorporated are ordered to pay to Paul Connolly reparations of \$221,909, plus

⁹ Section 4o(1)(B) of the Commodity Exchange Act, 7 U.S.C. § 6o(1)(B), provides in pertinent part: "It shall be unlawful for a commodity trading advisor, associated person of a commodity trading advisor, . . . by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant."

¹⁰ See footnote 3, *supra*.

prejudgment and post-judgment interest on that amount at 0.15%, from October 22, 2008, to the date of payment, plus \$250 for the cost of the filing fee. Liability shall be joint and several.

Dated March 29, 2013.

A handwritten signature in cursive script, appearing to read "Philip V. McGuire".

Philip V. McGuire,
Judgment Officer