

II. CONSENTS AND AGREEMENTS

To effect settlement of all charges alleged in the Complaint against Enfinium without a trial on the merits or any further judicial proceedings, Enfinium:

1. Consents to entry of this Consent Order for Permanent Injunction and Other Equitable Relief and Penalties Against Defendant Enfinium ("Consent Order");

2. Affirms that Enfinium's consent to entry of this Consent Order is voluntary, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission or any member, officer, agent, or representative thereof, or by any other person, to induce it to consent to entry of this Consent Order;

3. Acknowledges service of the summons and Complaint;

4. Admits the jurisdiction of this Court over it and the subject matter of this action pursuant to Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1; which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaged 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 thereunder;

5. Admits the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, and Section 2(c)(2)(C)(iii)(I)(aa) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) (2006 and Supp. III 2009);

6. Admits that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e);

7. Waives:

- A. any and all claims that Enfinium may possess under the Equal Access to Justice Act ("EAJA"), 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, relating to, or arising from, this action;
- B. any and all claims that Enfinium may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this action;
- C. any and all claims of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of this Consent Order or any order imposing restitution, a civil monetary penalty, or any other relief; and
- D. any and all rights of appeal from this action;

8. Consents to the continued jurisdiction of this Court over it for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if Enfinium now or in the future resides outside the jurisdiction of this Court;

9. Agrees that it will not oppose enforcement of this Consent Order on the ground that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objection based thereon;

10. Agrees that neither Enfinium nor any of its agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect Enfinium's: (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. Enfinium shall take all steps necessary to

ensure that all of its agents and employees under its authority or control understand and comply with this agreement;

11. By consenting to the entry of this Consent Order, neither admits nor denies the allegations of the Complaint or the Findings of Fact and Conclusions of Law in this Consent Order, except as to jurisdiction and venue, which it admits. Further, Enfinium agrees and intends that the allegations of the Complaint shall be taken as true and correct and be given preclusive effect, without further proof, in the course of (a) any current or subsequent bankruptcy proceeding filed by, or on behalf of, or against Enfinium; (b) any proceeding pursuant to Section 8a of the Act, to be codified at 7 U.S.C. §§ 12a, and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.*; and (c) any proceedings to enforce the terms of this Consent Order;

12. Agree(s) to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 40 of Part IX of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against it, whether inside or outside the United States, and

13. Agrees that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Enfinium in any other proceeding.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, as amended, to be codified at 7 U.S.C.

§ 13a-1, and Section 2(c)(2) of the Act, 7 U.S.C. § 2(c)(2) (2006 and Supp. III 2009), as set forth herein.

A. Findings of Fact

15. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with administering and enforcing the Act, as amended, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Regulations, 17 C.F.R. §§ 1.1 *et seq.* (2011).

16. Defendant **Enfinium Pty Ltd** is a company located at Suite 405, 68 York Street, Sydney NSW 2000 Australia that solicits and accepts orders for off-exchange foreign currency (“forex”) transactions. Enfinium has never been registered with the Commission in any capacity.

17. On October 18, 2010, the Commission adopted new regulations implementing certain provisions of the Dodd-Frank Act and the CRA. For the purpose of forex transactions, the new regulations, among other things, require retail foreign exchange dealers (“RFEDS”) to register with the Commission before soliciting or accepting orders from a non-Eligible Contract Participant (“ECP”).

18. From October 18, 2010 until at least September 7, 2011 (the “relevant period”), Enfinium solicited and accepted orders from existing United States customers who were not ECPs, to open leveraged forex trading accounts through its corporate authorized representative, Vantage FX Pty Ltd (“Vantage”) and Vantage’s website, <http://www.vantagefx.com>.

19. During the relevant period, Enfinium rejected applications to open accounts from new U.S. customers who were not ECPs, however, non-ECP U.S. customers could still apply to open a trading account by submitting information online through Vantage’s website. The

online application contained a drop down menu for the applicant to select his "country" and the United States is the first country that can be selected.

20. Vantage's online application inquired about a prospective customer's savings and investments. However, Vantage did not inquire as to whether customers were ECPs, and in fact, allowed individual customers who did not have total assets of \$5 million to open accounts.

21. Enfinium offered to act as the counterparty to every contract. According to its Product Disclosure Statement, Enfinium "is the counterparty to every contract."

B. Conclusions of Law

1. Jurisdiction and Venue

22. This Court has jurisdiction over Enfinium and the subject matter of this action pursuant to Section 6c(a) of the Act, as amended, to be codified at 7 U.S.C. § 13a-1(a), 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 thereunder, the Commission may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order.

23. The Commission has jurisdiction over the forex solicitations at issue in this action pursuant to Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, and Section 2(c)(2)(C) (iii)(I)(aa) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) (2006 and Supp. III 2009).

24. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, to be codified at 7 U.S.C. § 13a-1(e), because Enfinium transacts business in this District and certain transactions, acts, practices, and courses of business alleged in the Complaint occurred, are occurring, or are about to occur within this District.

2. Defendant Enfinium Violated Section 2(c)(2)(C)(iii)(I)(aa) of the Act: Failure to Register

25. With certain exclusions that are not applicable here, Section 2(c)(2)(C)(iii)(I)(aa) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) (2006 and Supp. III 2009), among other things, requires registration with the Commission for entities offering to enter into agreements, contracts or transactions in forex that are offered to, or entered into with, non-ECPs on a leveraged or margined basis.

26. By (1) soliciting United States customers through Vantage's website, (2) to open a variety of leveraged forex trading accounts, (3) from persons who were not ECPs, as defined in Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1a, (4) while not qualifying for an exemption from registration, Enfinium has violated Section 2(c)(2)(C)(iii)(I)(aa) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) (2006 and Supp. III 2009).

3. Enfinium Violated Commission Regulation 5.3(a)(6)(i): Failure to Register as an RFED

27. With certain exclusions that are not applicable here, Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011) requires RFEDs to register with the Commission. Regulation 5.1(h)(1), 17 C.F.R. § 5.1(h)(1) (2011) defines an RFED as "any person that is, or that offers to be, the counterparty to a retail forex transaction, . . ."

28. During the relevant period, Enfinium offered to act as the counterparty to retail forex transactions with customers located in the United States without the benefit of registering as an RFED in violation of Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011).

C. Permanent Injunctive Relief and Other Equitable Relief and Penalties Under the Act are Warranted

29. Enfinium has engaged, is engaging, or is about to engage in acts and practices that violate Section 2(c)(2)(C)(iii)(I)(aa) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) (2006 and

Supp. III 2009), and Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011). Unless restrained and enjoined by this Court, there is a reasonable likelihood that Enfinium will continue to engage in the acts and practices alleged in the Complaint or in similar acts and practices that violate the Act and Regulations. Furthermore, the nature of Enfinium's violations and the need to deter others from committing similar violations of the Act and Regulations warrants the imposition of ancillary equitable relief to carry out the objectives of the Act and Regulations.

IV. PERMANENT INJUNCTION

THE PARTIES AGREE AND IT IS HEREBY ORDERED THAT:

30. Enfinium, all persons insofar as they are acting in the capacity of Enfinium's officers, agents, servants, employees, and attorneys, and all persons insofar as they are acting in active concert or participation with Enfinium who receive actual notice of this Consent Order by personal service or otherwise, are permanently restrained, enjoined, and prohibited from directly or indirectly:

- A. Engaging in any conduct in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) (2006 and Supp. III 2009), including, but not limited to, soliciting or accepting orders from any United States customer or potential United States customer who is a non-ECP in connection with forex transactions without registering with the Commission; and
- B. Engaging in any conduct in violation of Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011), including, but not limited to, offering to be the counterparty to United States customers' forex transactions without registering with the Commission.

V. ENFINIUM AND VANTAGE WEBSITES

IT IS FURTHER ORDERED THAT:

31. Enfinium and all persons insofar as they are acting in the capacity of Enfinium's officers, agents, servants, employees, and attorneys shall within three days of the date of entry of this Consent Order publish on all websites owned or otherwise maintained by Enfinium or

Vantage including, but not limited to, <http://www.vantagefx.com>, a prominently displayed notice stating, "Please be advised, the services and products offered by Enfinium Pty Ltd are not being offered within the United States and are not offered to U.S. residents or citizens. Enfinium Pty Ltd is not registered with any U.S. regulator, including the National Futures Association ("NFA") and the Commodity Futures Trading Commission ("CFTC")" ("Website Notification").

32. Enfinium, all persons insofar as they are acting in the capacity of Enfinium's officers, agents, servants, employees, and attorneys, and all persons insofar as they are acting in active concert or participation with Enfinium who receive actual notice of this Consent Order by personal service or otherwise, are permanently restrained, enjoined, and prohibited from directly or indirectly contradicting, in any manner whatsoever, the Website Notification.

33. The provisions contained in Part V of this Consent Order shall remain in effect unless and until Enfinium properly registers with the Commission:

VI. TRADING PROHIBITION

34. Enfinium, all persons and entities insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of Enfinium, and all persons and entities insofar as they are acting in concert or participation with Enfinium who receive actual notice of this order by personal service or otherwise, shall be permanently prohibited, enjoined and restrained from directly or indirectly:

- A. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a) on behalf of any U.S. customers;
- B. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2011) ("commodity options"), security futures products, and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) ("forex contracts"), for any U.S. customers;

- C. Controlling or directing the trading for or on behalf of any U.S. customer, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts; and
- D. Soliciting, receiving, or accepting any funds from any U.S. customers for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts.

35. The provisions contained in Part VI of this Consent Order shall remain in effect unless and until Enfinium properly registers with the Commission.

VII. CERTIFICATION OF COMPLIANCE

IT IS FURTHER ORDERED THAT:

36. Within twenty days of the date of entry of this Consent Order, Enfinium shall deliver to the Commission in the manner required by Part IX of this Consent Order a written certification that it has complied with the requirements contained in Parts V and VI of this Consent Order. Such certification shall further include:

- A. A list of all websites on which the Website Notification has been published;
- B. A copy of all websites showing the Website Notification.

VIII. CIVIL MONETARY PENALTY

IT IS FURTHER ORDERED THAT:

37. Upon the date of entry of this Consent Order, Enfinium is hereby liable for, and a judgment is entered against Enfinium to pay, a civil monetary penalty in the amount of eighty thousand dollars (\$80,000) ("CMP Obligation"), plus post-judgment interest.

38. If Enfinium fails to satisfy its CMP Obligation within ten (10) days of the date of the entry of this Consent Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by

