

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

COMMODITY FUTURES TRADING	:	
COMMISSION,	:	
Plaintiff,	:	CIVIL ACTION NO.:
v.	:	COMPLAINT FOR PERMANENT
Enfinium Pty Ltd,	:	INJUNCTION, CIVIL MONETARY
Defendant.	:	PENALTIES, AND OTHER EQUITABLE
	:	RELIEF
	:	
	:	

Plaintiff, Commodity Futures Trading Commission (“Commission” or “CFTC”), by its attorneys, alleges as follows:

I. SUMMARY

1. On October 18, 2010, the CFTC adopted new regulations implementing certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010) (“Dodd-Frank Act”), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), and the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 1 *et seq.*, with respect to off-exchange foreign currency (“forex”) transactions. Pursuant to Section 2(c)(2)(C)(iii)(I)(aa) of the Commodity Exchange Act (“the Act”), as amended, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa), an entity must be registered if it wants to solicit or accept orders from a non-Eligible Contract Participant (“ECP”) in connection with forex transactions at a retail foreign exchange dealer (“RFED”) or futures commission merchant. Pursuant to CFTC Regulation (“Regulation”) 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011), in

connection with retail forex transactions, all RFEDs must be registered with the CFTC as of October 18, 2010.

2. Beginning on October 18, 2010 and continuing to the present (the “relevant period”), Defendant Enfinium Pty Ltd (“Enfinium”), through its corporate authorized representative, Vantage FX Pty Ltd (“Vantage”), upon information and belief, solicits or accepts orders from non-ECPs located in the United States in connection with retail forex transactions and is, or offers to be, the counterparty to these retail forex transactions without being registered as an RFED with the CFTC, in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa), and Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011).

3. By virtue of this conduct and the further conduct described herein, Enfinium has engaged, is engaging, or is about to engage in acts and practices in violation of the Act, as amended, and the Regulations.

4. Accordingly, 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, as amended, to be codified at 7 U.S.C. § 2(c)(2), the Commission brings this action to enjoin Enfinium’s unlawful acts and practices and to compel its compliance with the Act, as amended, and the Regulations and to further enjoin Enfinium from engaging in certain commodity or forex-related activity, including, through Vantage’s website, soliciting or accepting orders from U.S. customers and offering to be the counterparty to customers’ forex transactions, without appropriate registration with the Commission.

5. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, disgorgement, rescission, pre-

and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

6. Unless restrained and enjoined by this Court, Enfinium likely will 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

7. Section 6c(a) of the Act, as amended, to be codified at 7 U.S.C. § 13a-1(a), authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of the Act or any rule, regulation, or order thereunder.

8. The Commission has jurisdiction over the conduct and transactions at issue in this case pursuant to Sections 2(c)(2) and 6c of the Act, as amended , to be codified at 7 U.S.C. §§ 2(c)(2) and 13a-1.

9. Venue properly lies with the 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 this Complaint occurred, are occurring, and/or are about to occur within this District.

III. PARTIES

10. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.*, and the Regulations thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011).

11. Defendant **Enfinium Pty Ltd** is located at Suite 305, 15 Lime Street, Sydney NSW 2000 Australia. Enfinium has never been registered with the Commission in any capacity.

IV. STATUTORY BACKGROUND

12. For the purposes of trading retail forex, a “retail foreign exchange dealer” is defined in Regulation 5.1(h)(1), 17 C.F.R. § 5.1(h)(1) (2011), as any person that is, or offers to be, the counterparty to a retail forex transaction, except for certain persons not relevant to this Complaint.

13. An ECP is defined by the Act, in relevant part, as an individual with total assets in excess of (i) \$10 million, or (ii) \$5 million and who enters the transaction “to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.” Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1a.

V. FACTS

14. On October 18, 2010, the Commission adopted new regulations implementing certain provisions of the Dodd-Frank Act and the CRA. For the purposes of retail forex transactions, the new regulations, among other things, require RFEDs to register with the CFTC.

15. On information and belief, Enfinium, through Vantage, solicits or accepts orders from United States customers who are not ECPs to open leveraged forex trading accounts through Vantage’s website, <http://www.vantagefx.com>. Vantage’s website is hosted by a webhost located in San Antonio, Texas.

16. Customers can open trading accounts by submitting information online through Vantage’s website. The online application contains a drop down menu for the applicant to select his “country” and the United States is the first country that can be selected.

17. The online application also allows a customer to select a currency for the account and one of the available currencies is U.S. dollars.

18. The online application also contains a disclaimer that customers applying from outside Australia, “including the U.S.”, acknowledge they were not actively solicited by Vantage.

19. Vantage’s online application inquires about a prospective customer’s savings and investments. However, Enfinium does not inquire as to whether its customers are ECPs, and in fact, appears to allow individual customers who do not have total assets of \$5 million to open accounts. The website contains a dropdown menu that asks for a customer’s annual income and includes the option of “less than \$15,000.” Moreover, according to the website, a customer may open an account with as little as \$500.

20. Enfinium fails to inquire whether a prospective customer has the ability or the business need to accept foreign currency into his bank account.

21. Enfinium offers to act as the counterparty to every contract. According to its Product Disclosure Statement, Enfinium “is the counterparty to every contract.”

22. On information and belief, the forex transactions Enfinium engages in neither result in delivery within two days nor create an enforceable obligation to deliver between a seller and a buyer who have the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these forex contracts remain open from day to day and ultimately are offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

23. Thus, Enfinium has been and is acting as an RFED and continues to do so by offering to act as a counterparty for United States customers to trade forex through Vantage.

24. By the date of the filing of this complaint, Enfinium has not registered with the Commission as an RFED or in any other capacity.

25. Furthermore, Enfinium is not exempt from registration.

VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE:

**VIOLATION OF SECTION 2(c)(2)(C)(iii)(I)(aa) OF THE ACT, AS AMENDED:
FAILURE TO REGISTER**

26. Paragraphs 1 through 25 are realleged and incorporated herein.

27. During the relevant period, Enfinium, through Vantage, solicits or accepts orders from non-ECPs in connection with leveraged or margined forex transactions at an RFED. Enfinium engages in this conduct without being registered as an RFED, as required by Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011), all in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa).

28. Each day that Enfinium engages in this conduct since October 18, 2010 is alleged as a separate and distinct violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa).

COUNT TWO:

**VIOLATION OF REGULATION 5.3(a)(6)(i)
FAILURE TO REGISTER AS A RETAIL FOREIGN EXCHANGE DEALER**

29. Paragraphs 1 through 25 are realleged and incorporated herein.

30. During the relevant period, Enfinium is, or offers to be, the counterparty to retail forex transactions without being registered as an RFED in violation of Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i) (2011).

31. Each day that Enfinium fails to register as an RFED since October 18, 2010 is alleged as a separate and distinct violation of Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011).

VII. RELIEF REQUESTED

WHEREFORE, the CFTC respectfully requests that this Court, as authorized by Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, and pursuant to its own equitable powers, enter:

- A. An order finding that Enfinium violated Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa);
- B. An order finding that Enfinium violated Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011);
- C. An order of permanent injunction prohibiting Enfinium, and any other person or entity associated with it, from engaging in conduct in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa);
- D. An order of permanent injunction prohibiting Enfinium, and any other person or entity associated with it, from engaging in conduct in violation of Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011);
- E. An order of permanent injunction prohibiting Enfinium, and any other person or entity associated with it or its website, from operating its website while in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa), and Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011);
- F. An order of permanent injunction prohibiting Enfinium and any successor thereof, from, directly or indirectly:
 - 1) Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1a);

- 2) Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1)), 17 C.F.R. § 32.1(b)(1) (2011)) (“commodity options”), swaps, and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for its own personal account or for any account in which it has a direct or indirect interest;
- 3) Having any commodity futures, options on commodity futures, commodity options, swaps, and/or forex contracts traded on its behalf;
- 4) Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options, commodity options, swaps, and/or forex contracts;
- 5) Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, swaps, and/or forex contracts;
- 6) Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and
- 7) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent, or any other officer or employee of any person registered, exempted from registration or required to be registered with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).

G. Enter an order requiring that Enfinium, as well as any of its successors, disgorge to any officer appointed or directed by the Court all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived,

directly or indirectly, from acts or practices that constitute violations of the Act, as amended, and the Regulations, including pre and post-judgment interest;

H. Enter an order directing Enfinium and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between it and any of the customers whose funds were received by them as a result of the acts and practices, which constituted violations of the Act, as amended, and the Regulations as described herein;

I. Enter an order requiring Enfinium to pay civil monetary penalties under the Act, to be assessed by the Court, in amounts of not more than the greater of: (1) triple its monetary gain for each violation of the Act, as amended, and the Regulations or (2) \$140,000 for each violation committed on or after October 23, 2008;

J. Enter an order requiring Enfinium to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

K. Enter an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Respectfully submitted,

COMMODITY FUTURES TRADING COMMISSION

/s/ David A. Terrell

David A. Terrell
Senior Trial Attorney

Illinois ARDC No. 6196293
dterrell@cftc.gov

Elizabeth M. Streit
Chief Trial Attorney
Illinois ARDC No. 06188119

Scott R. Williamson
Deputy Regional Counsel
Illinois ARDC No. 06191293

Rosemary Hollinger
Regional Counsel
Illinois ARDC No. 3123647

Attorneys for Plaintiff
Commodity Futures Trading Commission
525 West Monroe Street, Suite 1100
Chicago, Illinois 60661

(312) 596-0539 (Terrell)
(312) 596-0537 (Streit)
(312) 596-0560 (Williamson)
(312) 596-0520 (Hollinger)
(312) 596-0700 (office number)
(312) 596-0714 (facsimile)