

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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:  
U.S. COMMODITY FUTURES :  
TRADING COMMISSION, :  
:  
Plaintiff, :  
:  
-against- :  
:  
FOREX CAPITAL MARKETS, LLC, :  
:  
Defendant. :  
-----X

COMPLAINT FOR INJUNCTIVE AND  
OTHER EQUITABLE RELIEF AND FOR  
CIVIL MONETARY PENALTIES UNDER  
THE COMMODITY EXCHANGE ACT  
AND COMMISSION REGULATIONS

Plaintiff, U.S. Commodity Futures Trading Commission (“Commission”), by its  
attorneys, alleges as follows:

**I. SUMMARY**

1. Defendant Forex Capital Markets, LLC (“FXCM”) is a retail foreign exchange  
dealer (“RFED”) registered with the Commission. As an RFED, FXCM is in the business of  
offering or engaging in retail off-exchange foreign currency (“forex”) transactions and is subject  
to Part 5 of the Commission’s Regulations, 17 C.F.R. pt. 5 (2015). Pursuant to Part 5, FXCM  
must at all times maintain sufficient adjusted net capital as determined by Commission  
Regulation 5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i), (3) (2015).

2. On or about January 15, 2015, in response to an inquiry from the National Futures  
Association (“NFA”), FXCM belatedly reported that FXCM was not in compliance with its  
adjusted net capital requirement. FXCM admitted that it had a shortfall of at least \$200 million  
under its capital requirements of approximately \$25 million, meaning FXCM had liabilities  
exceeding its assets by approximately \$175 million. This violated Commission Regulations

5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i), (3) (2015), because FXCM must at all times be in compliance with the adjusted net capital requirement to which it is subject.

3. Commission Regulation 5.6(a)(1), 17 C.F.R. § 5.6(a)(1) (2015), requires an RFED to give the Commission notice when its adjusted net capital is lower than that required by Commission Regulation 5.7. The regulation further requires that “[t]he notice must be given immediately after the applicant or registrant knows or should know that its adjusted net capital is less than that required by any of the aforesaid rules to which the applicant or registrant is subject....” 17 C.F.R. § 5.6(a)(1) (2015). FXCM failed to immediately notify the Commission when it knew or should have known that its adjusted net capital was less than that required.

4. FXCM also advertised that it would zero balance customers with debit balances, in violation of Commission Regulation 5.16, 17 C.F.R. § 5.16 (2015), which prohibits RFED’s such as FXCM from representing that it will guarantee customers against loss, limit the loss of customers, or not call for or attempt to collect security deposits, margin, or other deposits of customers.

## **II. JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action pursuant to Section 6c of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 13a-1 (2012), which authorizes the Commission to seek injunctive relief against any person, or to enforce compliance with the Act, 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 any provision of the Act or any rule, regulation or order thereunder.

6. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), in that Defendant transacts business in this District and/or the acts and

practices in violation of the Act and/or Commission Regulations have occurred or are occurring within this District.

### III. THE PARTIES

7. **Plaintiff U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged with the responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 et seq., and the regulations promulgated thereunder, 17 C.F.R. §§ 1.1 et seq. One of its core responsibilities is to protect the public interest by preventing disruptions to commodity, futures and forex market integrity. 7 U.S.C. § 5 (2012).

8. **Defendant Forex Capital Markets, LLC** is a registered RFED headquartered at 55 Water Street, 50th Floor, New York, NY. FXCM has offices, partners, and affiliates (collectively, “affiliates”) in the major financial centers of the world, through which it obtains a global retail client base trading in forex.

### IV. FACTS

#### A. Undercapitalization

9. Part 5 of the Commission’s Regulations required FXCM to maintain adjusted net capital of \$20,000,000 plus five percent of its total retail forex obligation in excess of \$10,000,000, at all times. Regulation 5.7(a)(1)(i)(B), (a)(3), 17 C.F.R. § 5.7(a)(1)(i)(B), (a)(3) (2015). Pursuant to this standard, FXCM’s capital requirement was approximately \$25 million in January 2015.

10. In September 2011, the Swiss National Bank began a policy of fixing or “pegging” the Swiss Franc (“CHF”) to a fixed exchange rate of 1.2000 Swiss Franc’s per Euro (“EUR”). On January 15, 2015, at approximately 4:30 AM Eastern Standard Time, the Swiss National Bank announced its removal of the 1.2000 EUR/CHF peg. Within seconds of the announcement, the EUR/CHF rate dropped to 1.1659, triggering FXCM’s price and execution

“seatbelts,” which prevented FXCM clients from receiving quotes and exiting their positions. FXCM’s “seatbelts” purportedly either halted execution of trading during severe price fluctuations, or suppressed prices that were anomalously high or low compared with other prices. These “seatbelts” were calibrated for anomalous pricing, but not designed to prevent or diminish the effects of an actual market event which increased the size of FXCM’s losses. By the time FXCM’s “seatbelts” were reset nearly forty-five minutes later, the EUR/CHF price had fallen as low as 1.0120.

11. As a result, FXCM became illegally undercapitalized on January 15, 2015.

12. FXCM was unable to calculate the amount of its resulting capital deficiency until the evening of January 15, 2015.

13. Thus, beginning on January 15, 2015, FXCM did not maintain its required minimum net capital. FXCM eventually determined and verbally informed the NFA that it had a shortfall of at least \$200 million under its capital requirements of approximately \$25 million.

14. FXCM also reported to the NFA that in addition to its massive capital shortfall, its global affiliates also sustained significant capital shortfalls following the removal of the peg on the EUR/CHF rate by the Swiss National Bank and volatility in the currency market.

15. FXCM and its affiliates had approximately 200,000 customers worldwide and 88,000 customers in the United States. The United States customers of FXCM were at risk of losing all of their funds if FXCM did not resolve its massive capital shortfall.

16. FXCM continued to be illegally undercapitalized on January 16, 2015.

17. On or about January 16, 2015, because of its undercapitalization, FXCM sought and obtained a loan on unfavorable terms of approximately \$279 million from a large conglomerate holding company.

B. Notice of Capital Deficiency

18. Although FXCM's losses were significant and immediate on January 15, 2015, such that FXCM knew or should have known it was undercapitalized, FXCM failed to provide immediate notice to the CFTC of its capital deficiency.

19. By FXCM's own admission, FXCM immediately identified the historic drop in the EUR/CHF pair. Furthermore, FXCM immediately contacted supervisors and managers not on site to begin attempting to manage the event. Despite immediately identifying the significance of the event and immediately contacting its supervisors and managers, FXCM failed to immediately provide the CFTC with notice that the historic event would cause FXCM to have a capital deficiency about which FXCM knew or should have known.

20. In fact, FXCM never affirmatively gave notice to the CFTC. It was only after the NFA and the CFTC initiated contact that FXCM provided notice of its capital deficiency.

C. Zero Debit Policy

21. In addition, on and before January 15, 2015, FXCM had an advertised policy of zeroing out negative customer balances, effectively guaranteeing customers against loss in contravention of Commission Regulations.

22. FXCM's policy of zeroing out negative customer balances was memorialized in FXCM's customer account opening documents, which had a provision stating that if the customer incurred a negative balance through trading activity FXCM would credit the customer account with the amount of the negative balance.

**V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

**COUNT I  
Undercapitalization**

23. The allegations set forth in paragraphs 1 through 22 are re-alleged and incorporated herein by reference.

24. Beginning on or about January 15, 2015, and continuing until at least January 16, 2015, FXCM did not maintain its required adjusted net capital, reporting a shortfall of at least \$200 million.

25. As a result, FXCM violated Regulation 5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i), (3) (2015).

26. Each day FXCM failed to satisfy its adjusted net capitalization requirement is alleged as a separate and distinct violation of Regulation 5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i), (3) (2015).

**COUNT II  
Failure to Notify the Commission**

27. The allegations set forth in paragraphs 1 through 22 are re-alleged and incorporated herein by reference.

28. Commission Regulation 5.6(a)(1), 17 C.F.R. § 5.6(a)(1) (2015), requires RFEDs to give the Commission notice when their adjusted net capital is lower than that required by Commission Regulation 5.7. The regulation further requires that “[t]he notice must be given immediately after the applicant or registrant knows or should know that its adjusted net capital is less than that required by any of the aforesaid rules to which the applicant or registrant is subject....” 17 C.F.R. § 5.6(a)(1) (2015).

29. FXCM failed to immediately notify the Commission when it knew or should have known that its adjusted net capital was lower than that required by Commission Regulation 5.7, and that it was therefore undercapitalized. This failure violated Commission Regulation 5.6(a)(1), 17 C.F.R. § 5.6(a)(1) (2015).

**COUNT III**  
**Guaranteeing against Customer Losses**

30. The allegations set forth in paragraphs 1 through 22 are re-alleged and incorporated herein by reference.

31. On and before January 2015, FXCM had a stated policy of guaranteeing against or limiting customer losses, or not calling for or attempting to collect margin or other deposits from certain customers.

32. FXCM violated Commission Regulation 5.16 by representing that it would guarantee customers against loss, limit the loss of customers, or not call for or attempt to collect security deposits, margin, or other deposits of customers.

33. Each day each separate account remained open under FXCM's policy of guaranteeing against or limiting customer losses is alleged as a separate and distinct violation of Regulation 5.16, 17 C.F.R. § 5.16 (2015).

34. Each representation by FXCM that it would guarantee or limit the loss of any person in any account carried by FXCM, or not call for or attempt to collect margin or other deposits in such an account is alleged as a separate and distinct violation of Regulation 5.16, 17 C.F.R. § 5.16 (2015).

**VI. RELIEF REQUESTED**

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

- A. Enter an order finding Defendant violated Commission Regulations 5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i), (3) (2015), 5.6(a)(1), 17 C.F.R. § 5.6(a)(1) (2015), 5.16, 17 C.F.R. § 5.16 (2015), 5.21, 17 C.F.R. § 5.21 (2015).
- B. Enter an Order of permanent injunction prohibiting Defendant and any other person or entity associated with it from, directly or indirectly, engaging in conduct in violation of the Act and Commission Regulations;
- C. Enter an order requiring Defendant to pay civil penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of (1) triple the monetary gain to Defendant for each violation of the Act; or (2) \$140,000 for each violation of the Act;
- D. Enter an order requiring Defendant to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and
- E. Enter an Order providing such other and further relief as this Court may deem necessary and appropriate.

Dated: August 16, 2016

Respectfully Submitted,

ATTORNEYS FOR PLAINTIFF  
U.S. COMMODITY FUTURES TRADING  
COMMISSION

/s/Luke Marsh

Luke B. Marsh (*pro hac vice* application filed herewith)  
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