

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMODITY FUTURES TRADING
COMMISSION
1155 21st Street, N.W.
Washington, D.C. 20581,

Plaintiff,

v.

INSTATRADE CORPORATION d/b/a
INSTAFOREX
c/o Shirley Trust Company Limited
90 Main Street
P.O. Box 3099
Road Town, Tortola
British Virgin Islands

and

ZTRADEFX LLC
208 Silvermine Road
New Canaan, CT 06840,

Defendants.

CIVIL ACTION NO.:

COMPLAINT FOR PERMANENT
INJUNCTION, CIVIL MONETARY
PENALTIES, AND OTHER EQUITABLE
RELIEF

Case: 1:11-cv-00188
Assigned To : Sullivan, Emmet G.
Assign. Date : 1/26/2011
Description: General Civil

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

I. SUMMARY

1. On October 18, 2010, the CFTC enacted new regulations implementing certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”) 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) (“CRA”) 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 by the CRA, 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 Regulations (“Regulations”) 5.3(a)(6)(i) and (ii), to be codified at 17 C.F.R. §§ 5.3(a)(6)(i) and (ii), in connection with forex transactions, all RFEDs and all associated persons (“APs”) of RFEDs must be registered with the CFTC as of October 18, 2010. Pursuant to Regulations 5.3(a)(5)(i) and (ii), to be codified at 17 C.F.R. §§ 5.3(a)(5)(i) and (ii), in connection with forex transactions, all introducing brokers (“IBs”) and all associated persons (“APs”) of IBs 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”), InstaTrade Corporation d/b/a InstaForex (“InstaForex” or), while acting as an RFED, solicited orders from non-ECPs in connection with forex transactions without registering with the CFTC, in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa), and Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i).

3. During the relevant period, ZtradeFX LLC (“ZtradeFX”), while acting as an IB, failed to register with the CFTC, as required by Regulation 5.3(a)(5)(i), to be codified at 17 C.F.R. § 5.3(a)(5)(i).

4. By virtue of this conduct and the further conduct described herein, InstaForex and ZtradeFX (collectively, “Defendants”) have engaged, are engaging, or are about to engage in acts and practices in violation of the Act, as amended by the CRA, and the Regulations.

5. Accordingly, pursuant to Section 6c of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13a-1, and Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2), the Commission brings this action to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act, as amended by the CRA, and the Regulations and to further enjoin Defendants from engaging in certain commodity or forex-related activity, including, through their websites, soliciting customers or offering to be the counterparty to customers' forex transactions, without appropriate registration with the Commission. 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, Defendants 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 by the CRA, 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 Section 6c of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13a-1, and Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2).

9. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13a-1(e), because Defendants transact 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 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.*

11. Defendant **InstaTrade Corporation d/b/a InstaForex** is a corporation registered and incorporated under the laws of the British Virgin Islands that does business under the names InstaForex and InstaForex Companies. InstaTrade Corporation has never been registered with the Commission in any capacity.

12. Defendant **ZtradeFX LLC** is a Connecticut limited liability company formed on or about February 22, 2007, with its principal place of business at 208 Silvermine Road, New Canaan, Connecticut 06840. ZtradeFX has never been registered with the Commission in any capacity.

IV. STATUTORY BACKGROUND

13. For the purposes of trading forex, a “retail foreign exchange dealer” is defined in Regulation 5.1(h)(1), to be codified at 17 C.F.R. § 5.1(h)(1), as any person that is, or offers to be, the counterparty to a retail forex transaction, except for a person described in sub-paragraph (aa), (bb), (cc)(AA), (dd), (ee), or (ff) of section 2(c)(2)(B)(i)(II) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(B)(i)(II). These exceptions pertain to certain United States financial institutions, brokers and dealers registered under the Securities Exchange Act of 1934

and associated persons thereof, futures commission merchants and affiliated persons thereof, financial holding companies, and RFEDs registered with the Commission, and do not apply to Defendants.

14. 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.” *See* Section 1a(12)(A)(xi) of the Act, as amended by the CRA, 7 U.S.C. § 1a(12)(A)(xi).

15. For the purposes of trading forex, an “introducing broker” is defined in Regulation 5.1(f)(1), to be codified at 17 C.F.R. § 5.1(f)(1), as any person who solicits or accepts orders from a customer that is not an eligible contract participant (ECP) as defined in section 1a(12) of the Act, in connection with forex transactions.

IV. FACTS

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

17. During the relevant period, InstaForex acted as an RFED by serving or offering to serve as a counterparty to leveraged retail forex transactions conducted by its customers, who are not ECPs.

18. InstaForex holds itself out as a leading Electronic Communication Network (ECN) broker on the forex market that provides online forex trading accounts and forex trading platforms, as well as other trading services, to customers.

19. InstaForex solicits and accepts funds from U.S. customers who are not ECPs for the purpose of opening and maintaining individual retail foreign currency trading accounts and participating in off-exchange forex contracts. InstaForex solicits and accepts funds for forex trading from customers residing in this and other jurisdictions in the U.S. through its internet website at www.instaforex.com and through ZtradeFX, its IB in the U.S.

20. InstaForex also engages in business in this jurisdiction by conducting email and instant message correspondence with customers through its website and by accepting customer telephone calls through a U.S. toll free telephone number and a Skype address listed on its website. In addition, InstaForex's website states that it operates a trading server in the United States at InstaForex-USA.com, which is hosted on a computer server located in Dallas, Texas.

21. Customers open a forex trading account with InstaForex through its website by accepting a "Public Offer Agreement," which lists InstaForex's terms of service, and then completing an online account opening form. Customers are then directed to deposit funds with InstaForex through wire transfer, credit card payment, or by transferring funds to an InstaForex company account with electronic payment system providers such as Webmoney, Liberty Reserve, and Perfect Money. InstaForex accepts funds from customers located in the U.S. and other countries.

22. According to the InstaForex website, InstaForex has an "introducing office" in the U.S. at 208 Silvermine Road, New Canaan, Connecticut and at ztradefx.com, which are ZtradeFX's physical and website addresses.

23. During the relevant period, ZtradeFX acted as an IB by soliciting retail customers who are not eligible contract participants to participate in off-exchange forex contracts on behalf

of InstaForex and other RFEDs, and by introducing retail forex customers to InstaForex and other RFEDs.

24. ZtradeFX solicits customers in this and other jurisdictions in the U.S. through its internet website at www.ztradeFX.com. According to its website, ZtradeFX introduces new customers and accounts to InstaForex and other RFEDs and receives commissions based on customers' trades in those accounts.

25. ZtradeFX also solicits and introduces customers on behalf of InstaForex through a website for "InstaForex USA" at www.instaforexusa.com, which is hosted on a computer server located in Scottsdale, Arizona. This website lists the address and contact information for ZtradeFX and links directly to InstaForex's website, where customers can then open forex trading accounts. The InstaForex USA website claims that funds may be deposited or withdrawn from InstaForex trading accounts through ZtradeFX.

26. On information and belief, the forex transactions InstaForex 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).

27. Thus, InstaForex has been and is acting as an RFED and ZtradeFX has been and is acting as an IB, and both are soliciting non-ECPs to trade forex at InstaTrade.

28. As of the date of filing this complaint, Defendants have not registered with the CFTC.

29. Furthermore, InstaForex is not exempt from registration by virtue of meeting any of the descriptions in sub-paragraph (aa), (bb), (cc)(AA), (dd), (ee), or (ff) of Section 2(c)(2)(B)(i)(II) of the Act.

VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE:

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

30. Paragraphs 1 through 29 are realleged and incorporated herein,

31. During the relevant period, InstaForex solicited or accepted orders from non-ECs in connection with forex transactions at an RFED. InstaForex engaged in this conduct without being registered as an RFED, as required by Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i), all in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended by the CRA, to be codified at Section 2(c)(2)(C)(iii)(I)(aa).

32. Each day that InstaForex engaged 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 by the CRA, 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**

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

34. During the relevant period, InstaForex acted as an RFED, as defined in Regulation 5.1(h)(1), to be codified at 17 C.F.R. § 5.1(h)(1), and failed to register 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).

35. Each day that InstaForex failed to register as an RFED since October 18, 2010, is alleged as a separate and distinct violation of Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i).

COUNT THREE:
VIOLATION OF REGULATION 5.3(a)(5)(i)
FAILURE TO REGISTER AS AN INTRODUCING BROKER

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

37. During the relevant period, ZtradeFX acted as an IB, as defined in Regulation 5.1(f)(1), to be codified at 17 C.F.R. § 5.1(f)(1), and failed to register as an IB, in violation of Regulation 5.3(a)(5)(i), to be codified at 17 C.F.R. § 5.3(a)(5)(i).

38. Each day that ZtradeFX failed to register as an IB since October 18, 2010, is alleged as a separate and distinct violation of Regulation 5.3(a)(5)(i), to be codified at 17 C.F.R. § 5.3(a)(5)(i).

VI. RELIEF REQUESTED

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

- A. An order finding that InstaForex violated Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa);
- B. An order finding that InstaForex violated Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i);
- C. An order of permanent injunction prohibiting InstaForex, 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 by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa);

D. An order of permanent injunction prohibiting InstaForex, and any other person or entity associated with it, from engaging in conduct in violation of Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i);

E. An order finding that ZtradeFX violated Regulation 5.3(a)(5)(i), to be codified at 17 C.F.R. § 5.3(a)(5)(i);

F. An order of permanent injunction prohibiting ZtradeFX, and any other person or entity associated with it, from engaging in conduct in violation of Regulation 5.3(a)(5)(i), to be codified at 17 C.F.R. § 5.3(a)(5)(i);

G. An order of permanent injunction prohibiting InstaForex, and any other person or entity associated with it or its websites, from operating its websites while in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa), and Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i);

H. An order of permanent injunction prohibiting ZtradeFX, and any other person or entity associated with it or its websites, from operating its websites while in violation of Regulation 5.3(a)(5)(i), to be codified at 17 C.F.R. § 5.3(a)(5)(i);

I. An order of permanent injunction prohibiting Defendants 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(29) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a);

- 2) Entering into any transactions involving 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) (2010) (commodity options) and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (forex contracts) for their own personal account or for any account in which they have a direct or indirect interest;
- 3) Having any futures, options on commodity futures, commodity options, and/or forex contracts traded on their 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 futures, options, commodity options, and/or forex contracts;
- 5) Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any futures, options on commodity futures, commodity options, 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) (2010); and
- 7) Acting as a principal (as that term is defined in Regulation 3.1(a)), 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) (2010).

J. Enter an order requiring Defendants, as well as any successors to them, to 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 by the CRA, and the Regulations, including pre and post-judgment interest;

K. Enter an order directing Defendants 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 them 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 by the CRA, and the Regulations as described herein;

L. Enter an order requiring Defendants to pay civil monetary 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 Defendants for each violation of the Act, as amended by the CRA, and the Regulations or (2) \$140,000 for each violation committed on or after October 23, 2008;

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

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

Respectfully submitted,

PLAINTIFF UNITED STATES COMMODITY
FUTURES TRADING COMMISSION



JENNIFER DIAMANTIS

Trial Attorney

jdiamantis@cftc.gov

(Pa. Bar #84486)

CHRISTINE RYALL

Chief Trial Attorney

cryall@cftc.gov

(Fla. Bar #0983550)

PAUL HAYECK

Associate Director

phayeck@cftc.gov

United States Commodity Futures Trading
Commission

Division of Enforcement

1155 21st Street NW

Washington, D.C. 20581

Telephone: (202) 418-5078 (Diamantis)

Telephone: (202) 418-5318 (Ryall)

Fax: (202) 418-5523

Dated: January 26, 2011