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NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE

In the Matter of:	)	
	)	
FOREX CAPITAL MARKETS LLC	)	
(NFA ID #308179),	)	
	)	
and	)	NFA Case No. 11-BCC-016
	)	
DROR NIV	)	
(NFA ID #308183),	)	
	)	
Respondents.	)	

COMPLAINT

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association ("NFA"), and having found reason to believe that NFA Compliance Rules ("NFA Requirements") are being, have been, or are about to be violated and that the matter should be adjudicated, NFA's Business Conduct Committee ("BCC") issues this Complaint against Forex Capital Markets LLC ("FXCM") and Dror Niv ("Niv").

ALLEGATIONS

JURISDICTION

1. At all time relevant to this Complaint, FXCM was a registered futures commission merchant and Retail Foreign Exchange Dealer located in New York, New York. As such, FXCM was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.

2. At all times relevant to this Complaint, Niv was the chief executive officer ("CEO"), listed principal and a designated forex associated person ("AP") of FXCM.

BACKGROUND

3. FXCM has been an NFA Member since 2001. The firm's principal business is retail off-exchange foreign currency ("forex").

4. NFA conducted an investigation of FXCM's order execution practices which revealed a number of deficiencies, including unequal treatment of positive and negative price slippage, inequitable margin liquidation practices, order execution delays, and arbitrary price adjustment practices. NFA's investigation also found that FXCM failed to thoroughly investigate suspicious activity in customers' accounts and that FXCM and Niv failed to adequately supervise the firm's operations. These deficiencies are detailed in this Complaint.

APPLICABLE RULES

5. NFA Compliance Rule 2-36(c) provides that Forex Dealer Members and their Associates shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their forex business.

6. NFA Compliance Rule 2-36(e) provides, in pertinent part, that each Forex Dealer Member shall diligently supervise its employees and agents in the conduct of their forex activities and each Associate of a Forex Dealer Member who has supervisory duties shall diligently exercise such duties in the conduct of that Associate's forex activities for or on behalf of the Forex Dealer Member.

7. NFA Compliance Rule 2-43(a) provides, in pertinent part, that when a Forex Dealer Member gives a price adjustment to a customer, in accordance with the Rule, the Forex Dealer Member must give a price adjustment to all similarly situated customers.

8. NFA Compliance Rule 2-9(c) requires, in pertinent part, an NFA Member to implement an adequate anti-money laundering ("AML") program, and investigate and, where appropriate, report suspicious account activity.

COUNT I

VIOLATION OF NFA COMPLIANCE RULE 2-36(c): RETAINING GAINS DERIVED FROM POSITIVE PRICE SLIPPAGE.

9. The allegations contained in paragraphs 1 and 3 through 5 are realleged as paragraph 9.

10. The vast majority of the orders placed on FXCM's proprietary trading platform are "Market At Best" orders.

11. It is FXCM's current practice to automatically offset nearly all customer orders with its own counterparties, in an apparent attempt to mitigate its currency and counterparty risk exposure. FXCM only fills a customer's order after it has established an offsetting position at a liquidity provider equal to or better than the market price (plus FXCM's markup) that prevailed at the time the customer submitted his/her order (the so-called "tagged price"). In other words, for a customer's order to be executed, FXCM's offsetting order must be filled first.

12. In the event that FXCM is able to offset a customer's order at a better price than the "tagged price," it was FXCM's practice not to give the better price to the customer but instead give the customer the "tagged price" and retain for itself the

difference between the tagged price, which the customer received, and the better price that FXCM received in the offsetting trade.

13. On the other hand, if FXCM offset the customer's order at a worse price (negative slippage, unfavorable to the customer), FXCM gave the customer the worse price rather than the better price that was tagged when the customer submitted his/her order.

14. Thus, customer orders, which were deemed to be "Market At Best" orders on FXCM's trading platform, were denied the benefit of positive price slippage but when negative price slippage occurred these orders were filled at a worse price than the price at which they were submitted.

15. From January to September 2010, FXCM derived approximately $520,000 from positive slippage, none of which it passed on to its customers.

16. FXCM's unequal slippage practices also affected margin liquidation orders of FXCM's customers. FXCM's trading system automatically generated a margin liquidation order in a customer's account and an offsetting order with one of FXCM's liquidity providers when the customer's security deposit fell below the required level. In the event that the fill price received from the liquidity provider for the offsetting trade was more favorable than the price generated by FXCM's trading system, FXCM would not give the customer the more favorable price and instead would fill the customer's order at the price generated by FXCM's trading system at the time the margin liquidation order was generated. FXCM retained the difference between the more favorable price received from its liquidity provider and the price generated by its trading system.

17. On the other hand, if the price received for the offsetting trade was less favorable than the price generated by FXCM's trading system, FXCM gave the customer the less favorable price.

18. During January through September 2010, there were over 40,000 margin liquidation orders that experienced positive slippage, resulting in a gain of approximately $130,000 to FXCM on these orders.

19. FXCM's practice of keeping positive slippage for itself while passing negative price slippage through to customers, and its margin liquidation practices that also resulted in FXCM retaining positive price slippage and passing on negative price slippage to customers, constituted a failure on its part to uphold just and equitable principles of trade.

20. By reason of the foregoing, FXCM is charged with violations of NFA Compliance Rule 2-36(c).

COUNT II

VIOLATION OF NFA COMPLIANCE RULE 2-36(e): FAILING TO ADOPT OR CARRY OUT ADEQUATE PROCEDURES TO ENSURE THE EFFICIENT EXECUTION OF ALL CUSTOMER ORDERS.

21. The allegations contained in paragraphs 1, 3, 4 and 6 are realleged as paragraph 21.

22. NFA's review of FXCM's order execution practices revealed numerous orders that experienced difficulties causing delays in execution as a result of both market events and technical difficulties.

23. NFA's Interpretive Notice for NFA Compliance Rule 2-36(e) relating to the supervision of the use of electronic trading systems requires Members who

operate trading platforms to adopt and enforce written procedures reasonably designed to maintain adequate personnel and facilities for the timely and efficient execution of customer orders, and regularly evaluate the capacity of each electronic trading system and to increase capacity when needed. The Interpretive Notice also requires that the Member's procedures be reasonably designed to provide adequate capacity to meet estimated peak volume needs based on past experience, present demands, and projected demands.

24. FXCM failed to adopt or carry out adequate procedures to ensure the timely and efficient execution of customer orders, regular evaluations of the capacity of its electronic trading platform to efficiently execute customer orders, and the implementation of appropriate modifications to its trading platform to increase capacity when necessary.

25. By reason of the foregoing, FXCM is charged with violations of NFA Compliance Rule 2-36(e).

COUNT III

VIOLATION OF NFA COMPLIANCE RULE 2-43(a): FAILING TO TREAT ALL CUSTOMERS EQUALLY WHEN GIVING PRICE ADJUSTMENTS.

26. The allegations contained in paragraphs 1, 3, 4 and 7 are realleged as paragraph 26.

27. NFA reviewed FXCM's price adjustments sent to NFA on a weekly basis and found that FXCM failed to make price adjustments to the accounts of all similarly affected customers. Instead, on occasion FXCM gave price adjustments only to those customers who complained about losses caused by slippage and

execution delays without determining whether other customers had been similarly affected and should receive like adjustments.

28. FXCM's price adjustment policy violates NFA Compliance Rule 2-43(a)(1) which requires that all similarly affected customers receive an appropriate adjustment.

29. By reason of the foregoing, FXCM is charged with violations of NFA Compliance Rule 2-43(a)(1).

COUNT IV

VIOLATION OF NFA COMPLIANCE RULE 2-9(c): FAILING TO ADEQUATELY INVESTIGATE SUSPICIOUS ACTIVITY IN ALL CUSTOMERS' ACCOUNTS.

30. The allegations contained in paragraphs 1, 3, 4 and 8 are realleged as paragraph 30.

31. FXCM failed to conduct an adequate investigation of the suspicious activity in the accounts of three clients as required by NFA Compliance Rule 2-9(c). The suspicious activity in these accounts included significant unexplained wire activity, unexplained transfers between accounts, and deposits that were in excess of the clients' net worth and/or liquid assets identified on their opening account documents.

32. By reason of the foregoing, FXCM is charged with violations of NFA Compliance Rule 2-9(c) in connection with its AML program.

COUNT V

VIOLATION OF NFA COMPLIANCE RULE 2-36(e): FAILING TO SUPERVISE.

33. The allegations contained in paragraphs 1 through 4 and 6 are realleged as paragraph 33.

34. Niv was FXCM's CEO, the AP/principal in charge of FXCM's daily operations, and ultimately was responsible for supervising the firm's overall operations, including the firm's trading platforms, and the firm's order execution, margin liquidation, and price adjustment policies and practices.

35. The aforementioned practices and the other violations alleged herein evidence FXCM and Niv's failure to adequately supervise FXCM's operations to ensure compliance with NFA Requirements.

36. By reason of the foregoing, FXCM and Niv are charged with violations of NFA Compliance Rule 2-36(e).

PROCEDURAL REQUIREMENTS

ANSWER

You must file a written Answer to the Complaint with NFA within thirty days of the date of the Complaint. The Answer shall respond to each allegation in the Complaint by admitting, denying or averring that you lack sufficient knowledge or information to admit or deny the allegation. An averment of insufficient knowledge or information may only be made after a diligent effort has been made to ascertain the relevant facts and shall be deemed to be a denial of the pertinent allegation.

The place for filing an Answer shall be:

National Futures Association
300 South Riverside Plaza, Suite 1800
Chicago, Illinois 60606
Attn: Legal Department-Docketing

E-Mail: Docketing@nfa.futures.org
Facsimile: 312-781-1672

Failure to file an Answer as provided above shall be deemed an admission of the facts and legal conclusions contained in the Complaint. Failure to respond to any allegation shall be deemed an admission of that allegation. Failure to file an Answer as provided above shall be deemed a waiver of hearing.

POTENTIAL PENALTIES, DISQUALIFICATION AND INELIGIBILITY

At the conclusion of the proceedings conducted in connection with this Complaint, NFA may impose one or more of the following penalties:

(a) expulsion or suspension for a specified period from NFA membership;

(b) bar or suspension for a specified period from association with an NFA Member;

(c) censure or reprimand;

(d) a monetary fine not to exceed $250,000 for each violation found; and

(e) order to cease and desist or any other fitting penalty or remedial action not inconsistent with these penalties.

The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act. Respondents in this matter who apply for registration in any new capacity, including as an associated person with a new sponsor, may be denied registration based on the pendency of this proceeding.

Under Commodity Futures Trading Commission ("CFTC") Regulation 1.63, penalties imposed in connection with this Complaint may temporarily or permanently render Respondents who are individuals ineligible to serve on disciplinary committees, arbitration panels and governing boards of a self-regulatory organization, as that term is defined in CFTC Regulation 1.63.

NATIONAL FUTURES ASSOCIATION
BUSINESS CONDUCT COMMITTEE

Dated: 8-12-11

By: _____
Chairperson

/jac(COMPLAINTS\ForexCapitalMarkets_DrorNiv 2011 (FINAL)

AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on August 12, 2011, I served a copy of the attached Complaint, by sending such copy in the United States mail, first-class delivery, and by messenger service, in envelopes addressed as follows to:

Lloyd Kadish, Esq.
345 N. Canal Street
#901
Chicago, IL 60606-1360

Nancy Miskovich-Paschen

Nancy Miskovich-Paschen

Subscribed and sworn to before me
on this 12th day of August 2011.

Mary A. Patton

Notary Public

OFFICIAL SEAL
MARY A PATTON
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 8/28/2013