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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CENTRAL DIVISION**

**U.S. COMMODITY FUTURES
TRADING COMMISSION,
Plaintiff,**

v.

**FOREX LIQUIDITY LLC,
Defendant.**

CASE NO. SACV07-1437 CJC(RNBx)
(Honorable District Court Judge
Cormac J. Carney)
~~PROPOSED~~ ORDER OF
PERMANENT INJUNCTION,
CIVIL MONETARY PENALTY
AND ANCILLARY EQUITABLE
RELIEF AGAINST FOREX
LIQUIDITY LLC

1 Plaintiff U.S. Commodity Futures Trading Commission (“CFTC”) is an
2 independent federal regulatory agency that is charged by Congress with the
3 administration and enforcement of the Commodity Exchange Act (the “Act”), as
4 amended by the CRA and the Dodd-Frank Wall Street Reform and Consumer
5 Protection Act of 2010 (“Dodd-Frank Act”), Pub. L. No. 111-203, Title VII (the
6 Wall Street Transparency and Accountability Act of 2010), §§701-774, 124 Stat.
7 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 1 *et seq.*, and the
8 Commission’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R.
9 §§ 1.1 *et seq.* (2011).

10 On December 13, 2007, the CFTC filed a Complaint alleging that, as of
11 November 30, 2007, and perhaps earlier, the net capitalization of defendant Forex
12 Liquidity LLC (“FXLQ”) was insufficient and below the adjusted net capital
13 required by Section 4f(b) of the Act and Regulations 1.17(a)(1) and 1.17(a)(4), 17
14 C.F.R. §§ 1.17(a)(1), 1.17(a)(4) (2007). The Complaint also charged FXLQ with
15 failing to keep and maintain records that showed all transactions affecting its assets
16 and liabilities, in violation of Section 4f(a)(1) of the Act, 7 U.S.C. § 6f(a)(1)
17 (2006), and Regulation 1.18, 17 C.F.R. § 1.18 (2007).

18 By an Order dated December 14, 2007, the Court entered a statutory
19 restraining order (“SRO”) that, *inter alia*, froze FXLQ’s assets and prohibited the
20 destruction of any books and records. *See* December 14, 2007 Order, §§ VI;
21 VI(H). On January 25, 2008, the Court entered a Consent Order of Preliminary
22 Injunction ordering that the SRO shall remain in effect. *See* January 25, 2008,
23 Consent Order of Preliminary Injunction.

24 **I.**

25 **CONSENT AND AGREEMENT**

26 To effect settlement of this action without a trial on the merits or further
27 judicial proceedings, FXLQ:
28

- 1 1. Consents to all the provisions contained in this Consent Order;
- 2 2. Admits that this Court has personal and subject matter jurisdiction
- 3 over it in this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006);
- 4 3. Acknowledges service of the Summons and Complaint in this action;
- 5 4. For purposes of this Consent Order, admits that venue properly lies
- 6 with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006);
- 7 5. Waives: (a) any and all claims that it may possess under the Equal
- 8 Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or
- 9 Part 148 of the Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2009), relating to, or
- 10 arising from, this action; (b) any and all claims that it may possess under the Small
- 11 Business Regulatory Enforcement Act of 1996, Pub. L. No. 104-121, §§ 231- 232,
- 12 110 Stat. 847, 857-68 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat.
- 13 112 (2007), relating to, or arising from, this action; (c) any claim of Double
- 14 Jeopardy based upon the institution of this proceeding or the entry in this
- 15 proceeding of any order imposing a civil monetary penalty or any other relief; and
- 16 (d) all rights of appeal in this action;
- 17 6. Neither admits nor denies the allegations of the Complaint or the
- 18 Findings of Fact and Conclusions of Law contained in this Consent Order, except
- 19 as to jurisdiction and venue, which it admits. FXLQ agrees that the allegations of
- 20 the Complaint, and the Findings of Fact and Conclusions of Law in this Consent
- 21 Order, shall be taken as true and correct and be given preclusive effect, without
- 22 further proof in: (1) any current or subsequent bankruptcy proceeding filed by, on
- 23 behalf of, or against FXLQ; (2) a proceeding to enforce this Consent Order; and
- 24 (3) any proceeding pursuant to Section 8a of the Act, 7 U.S.C. § 12a(1), and/or
- 25 Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.*;
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1 7. Agrees to provide immediate notice to this Court and the CFTC by
2 certified mail of any bankruptcy proceeding filed by, on behalf of, or against it.
3 No provision of this Consent Order shall in any way limit or impair the ability of
4 any person to seek any legal or equitable remedy against FXLQ, or any other
5 person in any other proceeding;

6 8. Agrees to provide notice to this Court and the CFTC by certified mail
7 of any change to its contact telephone number(s) and/or mailing address(es) within
8 ten (10) calendar days of the change(s);

9 9. Agrees that FXLQ, and its agents and employees under its authority or
10 control, shall not take any action or make any public statement denying, directly or
11 indirectly, any allegation in the Complaint or Findings or Conclusions in this
12 Consent Order, or creating, or tending to create, the impression that the Complaint
13 or this Consent Order is without a factual basis; provided, however, that nothing in
14 this provision shall affect FXLQ's (a) testimonial obligations or (b) right to take
15 legal positions in other proceedings to which the CFTC is not a party. FXLQ shall
16 undertake all steps necessary to ensure that all of its agents and employees
17 understand and comply with this agreement;

18 10. Consents to the continued jurisdiction of this Court for the purpose of
19 enforcing the terms and conditions of this Consent Order and for any other
20 purposes relevant to this action, even if FXLQ now or in the future resides outside
21 this jurisdiction; and

22 11. Admits that FXLQ, through its authorized representative has read this
23 Consent Order and agrees to this Consent Order voluntarily, and that no promise or
24 threat of any kind has been made by the CFTC or any member, officer, agent, or
25 representative thereof, or by any other person, to induce its consent to this Consent
26 Order, other than as set forth specifically herein.
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II.

FINDINGS AND CONCLUSIONS

A. Findings of Fact

1. FXLQ is a registered futures commission merchant (“FCM”) and has been a member of the National Futures Association (“NFA”), a registered futures association pursuant to Section 17 of the Act, 7 U.S.C. § 21 (2006), since February 2006.

2. In February 2006, FXLQ began soliciting customers to open accounts to trade off-exchange foreign currency transactions. At the time FXLQ began operating in February 2006, FXLQ was required to maintain at least \$250,000 as a minimum amount of adjusted net capital to operate as a FCM. *See* Regulation 1.17(a)(1)(C), 17 C.F.R. § 1.17(a)(1)(C) (2006). In July 2006, however, this minimum capitalization amount was increased to \$1,000,000. Pursuant to Section 4f(b) of the Act, 7 U.S.C. § 6f(b) (2006), and Regulation 1.17(a)(1), 17 C.F.R. § 1.17(a)(1), FXLQ was required to maintain at least a minimum amount of \$1,000,000 in adjusted net capital to operate as a FCM.

3. Beginning on December 21, 2007, after the Complaint was filed in this matter, the net capital requirement applicable to FXLQ was increased to \$5 million. Thereafter, the net capital requirement applicable to FXLQ was increased to \$10 million as of October 31, 2008; \$15 million as of January 17, 2009, and \$20 million as of May 16, 2009.

4. From at least November 30, 2007 to December 7, 2007, FXLQ’s adjusted net capital was below the required minimum capitalization amount.

5. Pursuant to Section 4f(a)(1) of the Act, 7 U.S.C. § 6f(a)(1) (2006), and Regulation 1.18, 17 C.F.R. § 1.18 (2007), FXLQ is required to maintain records that correctly reflect its assets, liabilities and capital.

1 6. As a registered FCM, FXLQ was required pursuant to Commission
2 Regulation 1.10(a)-(d), 17 C.F.R. § 1.10(a)-(d), to submit a monthly report that
3 includes a statement of financial condition and a statement of the computation of
4 the minimum adjusted net capital requirements on a form designated as a 1-FR-
5 FCM (“1-FR”).

6 7. During February 28, 2006 and November 30, 2007, FXLQ, through its
7 agents, filed 1-FRs that inaccurately represented FXLQ’s “assets, liabilities and
8 capital,” including FXLQ’s net capitalization.

9 8. As a member of NFA, FXLQ was also required to submit weekly
10 NFA Forex Financial Reports detailing certain information relating to the firm’s
11 assets and liabilities. From at least February 2006 through December 14, 2007,
12 FXLQ, through its agents, filed inaccurate weekly NFA Forex Financial Reports
13 that misstated the firm’s assets and liabilities.

14 9. From at June 30, 2007 to November 30, 2007, FXLQ, through its
15 agents, failed to maintain records that correctly reflected its assets, liabilities, and
16 capital.

17 **B. Conclusions of Law**

18 10. This Court has jurisdiction over this action pursuant to Section 6c of
19 the Act, 7 U.S.C. § 13a-1 (2006), which provides that whenever it shall appear to
20 the CFTC that any person has engaged, is engaging, or is about to engage in any
21 act or practice constituting a violation of any provision of the Act or any rule,
22 regulation, or order promulgated thereunder, the CFTC may bring an action against
23 such person to enjoin such practice or to enforce compliance with the Act.

24 11. Venue properly lies with this Court pursuant to Section 6c(e) of the
25 Act, 7 U.S.C. § 13a-1(e) (2006), because FXLQ resides in and transacts its
26 business in the Central District of California, and the acts and practices in violation
27 of the Act occurred within this District, among other places.

1 12. Section 4f(b) of the Act, 7 U.S.C. § 6f(b) (2006), and Regulation
2 1.17(a)(1)(i)(C), 17 C.F.R. § 1.17(a)(1)(i)(C) (2007), specify that a registered
3 FCM, such as FXLQ, is required to meet the adjusted net capital requirement set
4 by the NFA. From November 30, 2007 to December 7, 2007, FXLQ's adjusted net
5 capital was below the required minimum capitalization amount. FXLQ continued
6 to operate as a FCM while undercapitalized. As such, FXLQ violated Section
7 4f(b) of the Act, 7 U.S.C. § 6f(b) (2006), and Regulations 1.17(a)(1)(C) and
8 1.17(a)(4), 17 C.F.R. §§ 1.17(a)(1)(C) and 1.17(a)(4) (2007).

9 13. Section 4f(a)(1) of the Act, 7 U.S.C. § 6f(a)(1) (2006), and Regulation
10 1.18, 17 C.F.R. § 1.18 (2007), specify that no person shall be registered as a FCM
11 or as an introducing broker unless current ledgers or other similar records are
12 prepared and kept which show or summarize, with appropriate references to
13 supporting documents, each transaction affecting assets, liabilities, income,
14 expense and capital accounts. From at least June 30, 2007 through November 30,
15 2007, FXLQ, through its agents, violated Section 4f(a)(1) of the Act, 7 U.S.C.
16 § 6f(a)(1) (2006), and Regulation 1.18, 17 C.F.R. § 1.18 (2007), by failing to
17 maintain records that correctly reflected its assets, liabilities, and capital.

18 **III.**

19 **ORDER FOR PERMANENT INJUNCTION**

20 This Court, being fully advised in the premises, finds that there is good cause
21 for the entry of this Consent Order and there is no just reason for delay. The Court
22 therefore directs the entry of a permanent injunction and orders other statutory and
23 equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), as set
24 forth herein. Accordingly,

25 **IT IS HEREBY ORDERED THAT:**

26 1. Defendant FXLQ is permanently restrained, enjoined and prohibited
27 from directly or indirectly:
28

1 a. Failing to satisfy the minimum financial requirements for
2 FCMs registered with the CFTC and members of the NFA, in violation of Section
3 4(f)(b) of the Act, 7 U.S.C. § 6f(b) (2006), and Regulation 1.17(a)(1)(i)(C), 17
4 C.F.R. § 1.17(a)(1)(i)(C) (2011);

5 b. Failing to meet minimum financial requirements for FCMs and
6 failing to immediately transfer all customer accounts and cease doing business as a
7 FCM until such time as the firm is able to establish compliance with its minimum
8 financial requirements, in violation of Regulation 1.17(a)(4), 17 C.F.R.
9 § 1.17(a)(4) (2011); and

10 c. Failing to maintain current ledgers or other similar records that
11 show, with reference to supporting documents, each transaction reflecting the
12 assets, liabilities, income, expense and capital accounts of any FCM registered
13 under the Act, in violation of Section 4f(a)(1) of the Act, 7 U.S.C. § 6f(a)(1)
14 (2006), and Regulation 1.18, 17 C.F.R. § 1.18 (2011).

15 2. Defendant FXLQ is permanently restrained, enjoined and prohibited
16 from:

17 a. Trading on or subject to the rules of any registered entity (as
18 that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006));

19 b. Entering into any transactions involving commodity futures,
20 options on commodity futures, commodity options (as that term is defined in
21 Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2011) (“commodity options”),
22 and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of
23 the Act as amended by the CRA and the Dodd-Frank Wall Street Reform and
24 Consumer Protection Act of 2010 (“Dodd-Frank Act”), Pub. L. No. 111-203, Title
25 VII (the Wall Street Transparency and Accountability Act of 2010), §§701-774,
26 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 1 *et seq.*, and
27 the Commission’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R.
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1 §§ 1.1 et seq. (2011) for its own personal account, and for any account in which it
2 has a direct or indirect interest;

3 c. Having any commodity futures, options on commodity futures,
4 commodity options, and/or forex contracts traded on its behalf;

5 d. Controlling or directing the trading for or on behalf of any other
6 person or entity, whether by power of attorney or otherwise, in any account
7 involving commodity futures, options on commodity futures, commodity options,
8 and/or forex contracts;

9 e. Soliciting, receiving or accepting any funds from any person for
10 the purpose of purchasing or selling any commodity futures, options on commodity
11 futures, commodity options, and/or forex contracts;

12 f. Applying for registration or claiming exemption from
13 registration with the CFTC in any capacity, and engaging in any activity requiring
14 such registration or exemption from registration with the Commission except as
15 provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and

16 g. Acting as a principal (as that term is defined in Regulation
17 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent or any other officer or employee of any
18 person registered, exempted from registration or required to be registered with the
19 CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9)
20 (2011).

21 3. The injunctive provisions of this Consent Order shall be binding upon
22 FXLQ and upon any person acting in the capacity of officer, agent, attorney,
23 servant, or employee of FXLQ, and upon any person who receives actual notice of
24 this Consent Order by personal service or otherwise insofar as such person is in
25 active concert or participation with FXLQ.
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IV.

ORDER FOR CIVIL MONETARY PENALTY

AND OTHER ANCILLARY RELIEF

IT IS HEREBY ORDERED that FXLQ shall comply fully with the following terms, conditions and obligations relating to a civil monetary penalty and other ancillary relief:

A. Civil Monetary Penalty

1. Good cause exists for the imposition of a civil monetary penalty (“CMP”) upon FXLQ pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006).

2. FXLQ shall pay a CMP in the amount of Four Hundred Thousand Dollars (\$400,000), plus post-judgment interest, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006). The CMP is due and owing upon entry of this Consent Order.

3. Post-judgment interest on the CMP shall accrue beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order, pursuant to 28 U.S.C. § 1961 (2006).

4. FXLQ shall pay the CMP by electronic funds transfer, U.S. postal money order, certified check, or bank cashier’s check. If payment is to be made other than by electronic funds transfer, the payment shall be made payable to the CFTC, and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables --- AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, Oklahoma 73169

1 Telephone: 405-954-6644

2 5. If payment is to be made by electronic funds transfer, FXLQ shall
3 contact Linda Zurhorst or her successor at the above address to receive payment
4 instructions and shall fully comply with those instructions. FXLQ shall
5 accompany payment of the penalty with a cover letter that identifies the name and
6 docket number of the proceeding. FXLQ shall simultaneously transmit copies of
7 the cover letter and the form of payment to: (a) the Director, Division of
8 Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre,
9 1155 21st Street, N.W., Washington, D.C. 20581, and (b) the Chief, Office of
10 Cooperative Enforcement, Division of Enforcement, at the same address.

11 **B. Partial Payments**

12 1. Any acceptance by the CFTC of partial payment of the CMP ordered
13 in this Consent Order shall not be deemed a waiver of the FXLQ's requirement to
14 make further payments pursuant to this Consent Order, or a waiver of the CFTC's
15 right to seek to compel payment of any remaining balance.

16 **C. Cooperation**

17 FXLQ shall cooperate fully with the CFTC and/or any government agency
18 seeking to enforce the civil monetary provision of this Consent Order by providing
19 any requested information relating to its financial status including, but not limited
20 to, income and earnings, assets, financial statements, asset transfers, and tax
21 returns.

22 **D. Equitable Relief Provisions**

23 The equitable relief provisions of this Consent Order shall be binding upon
24 FXLQ and upon any person insofar as he or she is acting in the capacity of officer,
25 agent, servant or employee of FXLQ, and upon any person who receives actual
26 notice of this Consent Order, by personal service, email, facsimile or otherwise,
27 insofar as he or she is acting in active concert or participation with FXLQ.

V.

MISCELLANEOUS PROVISIONS

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3 1. Authority. Bertrand Syre hereby warrants that he is a manager of
4 FXLQ and that this Consent Order has been duly authorized by FXLQ and he has
5 been duly empowered to sign and submit it on behalf of FXLQ and take all
6 necessary and appropriate acts to carryout and implement the Order in accordance
7 with its terms without further order of the Court.

8 2. Notices. All notices required by this Consent Order shall be sent by
9 certified mail, return receipt requested, as follows:

10 a. Notice to Plaintiff, Commission:

11 Director, Division of Enforcement
12 Commodity Futures Trading Commission
13 1155 21st Street, N.W.
14 Washington, D.C. 20581

15 b. Notice to FXLQ:

16 Dirk O. Julander
17 Julander, Brown & Bollard, LLP
18 9110 Irvine Center Drive
Irvine, CA 92618

19 3. Successors and Assigns. This Consent Order shall inure to the benefit
20 of and shall bind the parties' successors, assigns, heirs, beneficiaries and
21 administrators.

22 4. Counterparts. This Consent Order may be executed by the parties in
23 counterparts and by facsimile.

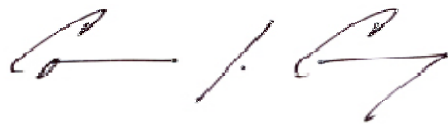
24 5. Entire Agreement, Amendments and Severability. This Consent
25 Order incorporates all of the terms and conditions of the settlement among the
26 parties. Nothing shall serve to amend or modify this Consent Order in any respect
27 whatsoever, unless: (1) reduced to writing, (2) signed by all parties, and
28 (3) approved by order of the Court.

1 6. Invalidation. If any provision of this Consent Order, or if the
2 application of any provisions or circumstances is held invalid, the remainder of this
3 Consent Order and the application of the provisions to any other person or
4 circumstance shall not be affected by the holding.

5 7. Waiver. The failure of any party hereto at any time or times to require
6 performance of any provision hereof shall in no manner affect the right of such
7 party at a later time to enforce the same or any other provision of this Consent
8 Order. No waiver in one or more instances of the breach of any provision
9 contained in this Consent Order shall be deemed to be or construed as a further or
10 continuing waiver of such breach or waiver of the breach of any other provision of
11 this Consent Order.

12 8. Continuing Jurisdiction of this Court. The Court shall retain
13 jurisdiction of this case to assure compliance with this Consent Order and for all
14 other purposes related to this action.

15
16 **DONE AND ORDERED** this 19th day of April, 2012.

17 

18
19 _____
20 Cormac J. Carney
21 United States District Judge

22 **Consented to and
23 Approved for Entry by:**

24 Dated: _____

25 _____
26 **Officer of Defendant Forex
27 Liquidity, LLC**
28

1 Dated: _____

Peter M. Haas
Richard P. Foelber
A. Daniel Ullman II
Attorneys for Plaintiff
U.S. Commodity Futures Trading
Commission
1155 21st Street, N.W.
Washington D.C. 20581
(202) 418-5000 (telephone)
(202) 418-5523 (facsimile)

9 **Approved as to form:**

10 Dated: _____

Dirk O. Julander
Julander, Brown, Bollard, and
Chapman, LLP
9110 Irvine Center Drive
Irvine, CA 92618
(949) 477-2100 (telephone)
(949) 477-6355 (facsimile)
Attorney for Defendant Forex
Liquidity, LLC