

**BEFORE THE
NATIONAL FUTURES ASSOCIATION**

In the Matter of:)
)
FX DIRECT DEALER, LLC) NFA Docket No. 12-MRA-009
(NFA ID #397435))
)

**NOTICE OF MEMBER RESPONSIBILITY ACTION
UNDER NFA COMPLIANCE RULE 3-15**

National Futures Association (NFA) hereby gives notice to FX Direct Dealer, LLC (FXDD), an NFA Member and a registered futures commission merchant (FCM), retail foreign exchange dealer (RFED) and Forex Dealer Member (FDM) that, pursuant to NFA Compliance Rule 3-15, the President of NFA, with the concurrence of NFA's Executive Committee, has taken a Member Responsibility Action (MRA) against FXDD, whereby FXDD is required to comply with the following:

1. Prior to the resolution, and during the pendency, of In the Matter of FX Direct Dealer, LLC, NFA Case No. 12-BCC-021 ("BCC case"), FXDD must demonstrate to NFA that it is financially able to make restitution to customers in the amount of approximately \$3.3 million for damages allegedly sustained by customers as a result of FXDD's asymmetrical price slippage practices, as alleged in the Complaint in the above-cited case. In order to demonstrate its ability to make restitution to customers, FXDD is required to deposit – and keep on deposit during the pendency of the BCC case – \$3.3 million in a bank escrow account or in an attorney trust account, acceptable to NFA, or post a bond in such amount with NFA. Moreover, FXDD may not consider any funds on deposit in a bank escrow account or attorney trust account as a current asset for purposes of calculating the firm's capital, as such funds are restricted. FXDD's obligation, hereunder, shall terminate when all of the following conditions have been met: the BCC case is resolved; there is a final determination of the amount of restitution, if any, that FXDD owes to customers as a result of its asymmetrical price slippage practice; and FXDD fully pays customers such restitution amount, if any, as finally determined.
2. In the event FXDD fails to comply with the requirements of paragraph 1, above, by Noon (CDT) on Friday, December 14, 2012, the following measures will become effective immediately:
 - a. FXDD shall be prohibited from accepting or placing trades for any customer accounts except for the rollover of currently existing customer positions and/or liquidation of existing customer positions. In taking any action to rollover or

liquidate customer positions, FXDD must act in the best interest of its customers.

- b. FXDD shall be required to liquidate all positions held in any account for any FXDD principal, employee, or affiliate and is prohibited from initiating any additional positions in such accounts; and
- c. FXDD shall be prohibited from distributing, disbursing or transferring any funds, except to existing customers, without the prior approval of NFA. Further, FXDD shall be required to provide notice to NFA of any distribution, disbursement or transfer of any funds to any customer on the same business day that any such distribution, disbursement or transfer occurs. Such notice shall include, at least, the date of the distribution, the name, address and account number of the recipient, identification of the FXDD account from which funds are distributed and to which funds are distributed, and the amount of the distribution.

This action is effective immediately and is deemed necessary to protect FXDD's customers and former customers who were harmed by FXDD's asymmetrical price slippage practices and ensure that they receive full restitution from FXDD for the damages they sustained as a result of such practices, which are alleged to total approximately \$3.3 million.

In support of these actions, NFA attaches the affidavit of Sarah A. Walsh, who is a Manager in NFA's Compliance Department, and based thereon alleges as follows:

- 1. FXDD is an FCM, RFED and FDM of NFA located in New York, New York. FXDD has been an NFA Member since December 2009. Its principal business is acting as the counterparty to foreign currency transactions (forex) for retail customers and presently has over 4,000 active customers.
- 2. On June 29, 2012, NFA's Business Conduct Committee (BCC) issued a Complaint against FXDD in the BCC case referred to previously. Among other allegations, the Complaint alleges that FXDD had engaged in asymmetrical price slippage practices that favored FXDD over its customers.
- 3. Specifically, the Complaint in the BCC case alleges that, between December 2009 and June 2011, it was the practice of FXDD to fill a customer's order at the price the customer entered if, after the customer entered his/her order but before it was filled, the market moved in the customer's favor ("positive slippage") by no more than

two pips. On the other hand, if, after the customer entered his/her trade, the market moved in the customer's favor by more than two pips, then FXDD would reject the order.

4. However, according to the Complaint in the BCC case, FXDD did not follow the same execution practice, as described above, if the market moved in FXDD's favor. In this situation, FXDD would allow the market to move an unlimited number of pips in the direction favorable to FXDD, without re-quoting or rejecting the customer's order. As a result, FXDD always filled the customer's order at the price the customer entered when the customer placed his/her trade, even if that price was far outside the prevailing market price at the time the order was filled. Under such circumstances, the customer's position would be unprofitable the very instant it was executed.
5. The Complaint in the BCC case charges that FXDD's asymmetrical price slippage practices harmed customers by filling their orders at the price prevailing when they entered their orders, if – after their orders were entered but before they were filled – the market price moved against them (and in favor of FXDD) more than two pips, but rejecting their orders when the market price moved in their favor (and against FXDD) more than two pips.
6. NFA has advised FXDD that any resolution of the BCC case – in order to receive NFA's recommendation – would at a minimum have to impose an obligation on FXDD to make restitution to customers in the amount that they were harmed as a result of FXDD's asymmetrical price slippage practices. NFA further advised FXDD that NFA staff had taken the very same position regarding restitution in prior NFA disciplinary cases involving asymmetrical price slippage practices and that NFA's BCC had issued Complaints and issued Decisions in those cases adopting the position of NFA staff, e.g., In the Matter of Gain Capital Group, NFA Case No. 10-BCC-015; In the Matter of IKON Global Markets, NFA Case No. 10-BCC-029; In the Matter of Forex Capital Markets, NFA Case No. 11-BCC-016. This was also NFA's position in the recent asymmetrical price slippage case of In the Matter of FC Stone, NFA Case No. 12-BCC-036.
7. Issues involving FXDD's financial circumstances raise concerns about FXDD's ability to pay customers once the BCC case is resolved and if a final determination as to the amount of restitution is made. Specifically, under Section 11(a) of NFA's Financial Requirements, FXDD is required to maintain adjusted net capital (ANC) of \$20 million, plus 5% of all liabilities owed to customers exceeding \$10 million. The information reported by FXDD in its most recent 1-FR financial statement indicated that, as of

October 31, 2012, FXDD had an ANC of over \$26.9 million and more than \$5.8 million in excess net capital (ENC).

8. On December 3, 2012, NFA became aware that FXDD was under its minimum net capital requirement as of October 31, 2012. Specifically, as of October 31, 2012, the firm's minimum net capital requirement was just above \$21 million. However, NFA determined that FXDD apparently had ANC of \$17.4 million and its ENC was close to a negative \$3.6 million, which contradicted the information reported by FXDD in its 1-FR financial statement as of October 31, 2012.
9. The discrepancy resulted from FXDD reporting its capital on a consolidated basis with its subsidiaries and including their assets and liabilities with those of FXDD in calculating FXDD's ANC and ENC. NFA staff confirmed with Commodity Futures Trading Commission (CFTC or Commission) staff that FXDD was required to maintain adequate capital on its own, exclusive of the assets and liabilities of its subsidiaries. Moreover, the CFTC's directions to the Form 1-FR concerning consolidated financial reports clearly provide, in pertinent part, that any benefit (from consolidation) that qualifies for recognition shall not be counted toward a registered FCM's (such as FXDD) fulfillment of its minimum required net capital, but shall only be counted as an increase in the consolidated excess net capital.
10. Therefore, NFA staff contacted FXDD's chief financial officer, Timothy Garland (Garland), to discuss the firm's capital position. During these discussions, NFA inquired as to the value of assets and liabilities of Avatar Capital Group, LLC (Avatar), a subsidiary of FXDD, as well as a broker-dealer registered with the Securities and Exchange Commission and a member of the Financial Industry Regulatory Authority. Garland informed NFA staff that approximately \$9 million of Avatar's assets were included in calculating FXDD's minimum ANC requirement as of October 31, 2012.
11. NFA staff informed Garland that CFTC Regulation 1.17(f) requires NFA Members to maintain capital on a stand-alone basis without the benefit of consolidation. After being told this, Garland stated that – if the assets and liabilities of Avatar were excluded from the firm's capital computation – FXDD would have been below its minimum capital requirement as of October 31, 2012.
12. Garland provided NFA with an extract of Form 1-FR showing a pro-forma minimum net capital computation as of October 31, 2012 on a non-consolidated basis, in which FXDD treated its investment in Avatar as a disallowed asset. The pro-forma minimum capital computation confirmed that FXDD was approximately \$3.6 million below its minimum requirement. In addition, FXDD apparently had been below its minimum capital requirement for some time.

13. To remedy this shortfall, FXDD withdrew \$6 million in equity capital from Avatar on December 3, 2012 and transferred the funds to FXDD's operating account. FXDD also provided NFA with copies of the December 3, 2012 wire advice reports showing the withdrawal from Avatar's operating account and the corresponding deposit into FXDD's operating account.
14. On December 4, NFA confirmed the \$6 million deposit through a review of FXDD's bank records. On the same day, FXDD provided NFA with a pro-forma net capital computation as of December 3, 2012, which indicated the firm has approximately \$3 million in ENC. However, FXDD's current ENC of \$3 million is less than the approximately \$3.3 million for damages allegedly sustained by customers as a result of FXDD's asymmetrical price slippage practices, as alleged in the BCC case.
15. Other FXDD financial information raises additional concerns about the firm's ability to make restitution to customers. Since FXDD became an NFA Member in December 2009, the firm has consistently made sizable capital withdrawals over last the several years. Specifically, records NFA reviewed show the following capital withdrawals since December 31, 2009:

December 31, 2009 – \$2.5 million
May 31, 2010 – \$500,000
September 30, 2010 – \$7.5 million
December 31, 2011 – \$3.5 million
February 28, 2012 – \$1.6 million

This activity, especially if repeated again before the resolution of the BCC case, raises further concerns about FXDD's financial condition, as well as the firm's ability to make restitution to customers.

16. Based on the foregoing facts and circumstances, NFA is concerned about FXDD's ability to pay restitution to customers caused by the firm's asymmetrical price slippage practices. Although the firm is currently in compliance with NFA Financial Requirements, it appears that FXDD had failed to comply with its minimum adjusted net capital requirement for some time and has a practice of making significant capital withdrawals during the calendar year which further reduces the firm's excess net capital.
17. Accordingly, requiring FXDD to deposit – and keep on deposit during the pendency of the BCC case – \$3.3 million in a bank escrow account or in an attorney trust account, or post a bond in such amount with NFA, will ensure that FXDD is able to make

restitution to customers once a final determination is made as to the amount of restitution, if any, that FXDD owes to customers as a result of its asymmetrical price slippage practices.

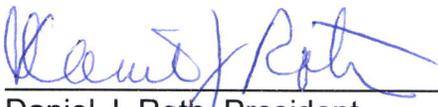
The MRA shall remain in effect until the resolution of the BCC case and upon a final determination of the amount of restitution, if any, that FXDD owes to customers as a result of its asymmetrical price slippage practices.

FXDD is entitled to a prompt hearing on this matter before NFA's Hearing Committee if they so request. The request for hearing shall be made in writing to: National Futures Association, 300 S. Riverside Plaza, Suite 1800, Chicago, Illinois 60606, Attention: Legal Docketing Department.

Aggrieved parties may petition the CFTC for a stay of this MRA pending a hearing pursuant to and in conformity with the terms set forth in Commission Regulation 171.41.

NATIONAL FUTURES ASSOCIATION

Date: December 7, 2012

By: 

Daniel J. Roth, President

AFFIDAVIT

THE AFFIANT, SARAH A. WALSH, BEING DULY SWORN AND UNDER OATH STATES THAT:

1. My name is Sarah A. Walsh, and I am employed by National Futures Association (NFA) as a Manager in the Compliance Department.
2. FX Direct Dealer, LLC (FXDD) is an NFA Member and a registered futures commission merchant (FCM), retail foreign exchange dealer (RFED) and Forex Dealer Member (FDM) of NFA located in New York, New York. FXDD has been an NFA Member since December 2009. Its principal business is acting as the counterparty to foreign currency transactions (forex) for retail customers and presently has over 4,000 active customers.
3. On June 29, 2012, NFA's Business Conduct Committee (BCC) issued a Complaint against FXDD in the BCC case, which is described in greater detail in paragraph 1 of the Notice of MRA. Among other allegations, the Complaint alleges that FXDD had engaged in asymmetrical price slippage practices that favored FXDD over its customers.
4. Specifically, the Complaint in the BCC case alleges that, between December 2009 and June 2011, it was the practice of FXDD to fill a customer's order at the price the customer entered if, after the customer entered his/her order but before it was filled, the market moved in the customer's favor ("positive slippage") by no more than two pips. On the other hand, if, after the customer entered his/her trade, the market moved in the customer's favor by more than two pips, then FXDD would reject the order.
5. However, according to the Complaint in the BCC case, FXDD did not follow the same execution practice, as described above, if the market moved in FXDD's favor. In this situation, FXDD would allow the market to move an unlimited number of pips in the direction favorable to FXDD, without re-quoting or rejecting the customer's order. As a result, FXDD always filled the customer's order at the price the customer entered when the customer placed his/her trade, even if that price was far outside the prevailing market price at the time the order was filled. Under such circumstances, the customer's position would be unprofitable the very instant it was executed.
6. The Complaint in the BCC case charges that FXDD's asymmetrical price slippage practices harmed customers by filling their orders at the price prevailing when they entered their orders, if – after their

orders were entered but before they were filled – the market price moved against them (and in favor of FXDD) more than two pips, but rejecting their orders when the market price moved in their favor (and against FXDD) more than two pips.

7. NFA has advised FXDD that any resolution of the BCC case – in order to receive NFA's recommendation – would at a minimum have to impose an obligation on FXDD to make restitution to customers in the amount that they were harmed as a result of FXDD's asymmetrical price slippage practices. NFA further advised FXDD that NFA staff had taken the very same position regarding restitution in prior NFA disciplinary cases involving asymmetrical price slippage practices and that NFA's BCC had issued Complaints and issued Decisions in those cases adopting the position of NFA staff, e.g., In the Matter of Gain Capital Group, NFA Case No. 10-BCC-015; In the Matter of IKON Global Markets, NFA Case No. 10-BCC-029; In the Matter of Forex Capital Markets, NFA Case No. 11-BCC-016. This was also NFA's position in the recent asymmetrical price slippage case of In the Matter of FC Stone, NFA Case No. 12-BCC-036.
8. Issues involving FXDD's financial circumstances raise concerns about FXDD's ability to pay customers once the BCC case is resolved and if a final determination as to the amount of restitution is made. Specifically, under Section 11(a) of NFA's Financial Requirements, FXDD is required to maintain adjusted net capital (ANC) of \$20 million, plus 5% of all liabilities owed to customers exceeding \$10 million. The information reported by FXDD in its most recent 1-FR financial statement indicated that, as of October 31, 2012, FXDD had an ANC of over \$26.9 million and more than \$5.8 million in excess net capital (ENC).
9. On December 3, 2012, NFA became aware that FXDD was under its minimum net capital requirement as of October 31, 2012. Specifically, as of October 31, 2012, the firm's minimum net capital requirement was just above \$21 million. However, NFA determined that FXDD apparently had ANC of \$17.4 million and its ENC was close to a negative \$3.6 million, which contradicted the information reported by FXDD in its 1-FR financial statement as of October 31, 2012.
10. The discrepancy resulted from FXDD reporting its capital on a consolidated basis with its subsidiaries and including their assets and liabilities with those of FXDD in calculating FXDD's ANC and ENC. NFA staff confirmed with Commodity Futures Trading Commission (CFTC or Commission) staff that FXDD was required to maintain adequate capital on its own, exclusive of the assets and liabilities of its subsidiaries. Moreover, the CFTC's directions to the Form 1-FR concerning consolidated financial reports clearly provide, in pertinent part, that any

benefit (from consolidation) that qualifies for recognition shall not be counted toward a registered FCM's (such as FXDD) fulfillment of its minimum required net capital, but shall only be counted as an increase in the consolidated excess net capital.

11. Therefore, NFA staff contacted FXDD's chief financial officer, Timothy Garland (Garland), to discuss the firm's capital position. During these discussions, NFA inquired as to the value of assets and liabilities of Avatar Capital Group, LLC (Avatar), a subsidiary of FXDD, as well as a broker-dealer registered with the Securities and Exchange Commission and a member of the Financial Industry Regulatory Authority. Garland informed NFA staff that approximately \$9 million of Avatar's assets were included in calculating FXDD's minimum ANC requirement as of October 31, 2012.
12. NFA staff informed Garland that CFTC Regulation 1.17(f) requires NFA Members to maintain capital on a stand-alone basis without the benefit of consolidation. After being told this, Garland stated that – if the assets and liabilities of Avatar were excluded from the firm's capital computation – FXDD would have been below its minimum capital requirement as of October 31, 2012.
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14. To remedy this shortfall, FXDD withdrew \$6 million in equity capital from Avatar on December 3, 2012 and transferred the funds to FXDD's operating account. FXDD also provided NFA with copies of the December 3, 2012 wire advice reports showing the withdrawal from Avatar's operating account and the corresponding deposit into FXDD's operating account.
15. On December 4, NFA confirmed the \$6 million deposit through a review of FXDD's bank records. On the same day, FXDD provided NFA with a pro-forma net capital computation as of December 3, 2012, which indicated the firm has approximately \$3 million in ENC. However, FXDD's current ENC of \$3 million is less than the approximately \$3.3 million for damages allegedly sustained by customers as a result of FXDD's asymmetrical price slippage practices, as alleged in the BCC case.
16. Other FXDD financial information raises additional concerns about the firm's ability to make restitution to customers. Since FXDD became an NFA Member in December 2009, the firm has consistently made sizable

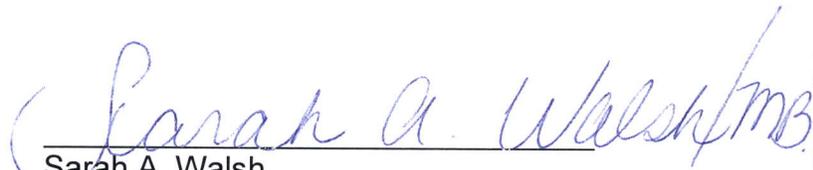
capital withdrawals over the last several years. Specifically, records NFA reviewed show the following capital withdrawals since December 31, 2009:

December 31, 2009 – \$2.5 million
May 31, 2010 – \$500,000
September 30, 2010 – \$7.5 million
December 31, 2011 – \$3.5 million
February 28, 2012 – \$1.6 million

This activity, especially if repeated again before the resolution of the BCC case, raises further concerns about FXDD's financial condition, as well as the firm's ability to make restitution to customers.

17. Based on the foregoing facts and circumstances, NFA is concerned about FXDD's ability to pay restitution to customers caused by the firm's asymmetrical price slippage practices. Although the firm is currently in compliance with NFA Financial Requirements, it appears that FXDD had failed to comply with its minimum adjusted net capital requirement for some time and has a practice of making significant capital withdrawals during the calendar year which further reduces the firm's excess net capital.
18. Accordingly, requiring FXDD to deposit – and keep on deposit during the pendency of the BCC case – \$3.3 million in a bank escrow account or in an attorney trust account, or post a bond in such amount with NFA, will ensure that FXDD is able to make restitution to customers once a final determination is made as to the amount of restitution, if any, that FXDD owes to customers as a result of its asymmetrical price slippage practices.

Further Affiant sayeth not.


Sarah A. Walsh

Subscribed and sworn to before me
on this 7th day of December 2012.


Notary Public



AFFIDAVIT OF SERVICE

I, Myra Lewis, on oath state that on December 7, 2012, I served copies of the attached Notice of Member Responsibility Action Under NFA Compliance Rule 3-15, by sending such copies by e-mail and regular mail, first-class delivery, in envelopes addressed as follows to:

Sauntia Warfield
Office of the Secretariat
Commodity Futures Trading
Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
E-mail: secretary@cftc.gov

Tempest Thomas
Office of Proceedings
Commodity Futures Trading
Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
E-mail: tthomas@cftc.gov

and by sending such copies by e-mail and overnight delivery, in envelopes addressed as follows to:

Michael O'Reilly
Chief Compliance Officer
FX Direct Dealer LLC
7 World Trade Center
250 Greenwich Street, 32nd Floor
New York, NY 10007
E-mail: moreilly@fxdd.com

and also by e-mail and messenger delivery to:

James B. Koch, Esq.
Gardiner Koch & Weisberg
53 W. Jackson Boulevard, Suite 950
Chicago, IL 60604
E-mail: jkoch@gkw-law.com

Stephen J. Senderowitz, Esq.
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601
E-mail: ssenderowitz@winston.com


Myra Lewis

Subscribed and sworn to before me
on this 7th day of December 2012.


Notary Public

