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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION AT MEMPHIS

Robert P. Di Troia  
CLERK U.S. DIST. CT.  
W.D. OF TN. MEMPHIS

COMMODITY FUTURES TRADING COMMISSION )

Plaintiff, )

v. )

FxTRADE FINANCIAL, LLC, JEFFREY A.  
MISCHLER, LEE N. ROMANO II; MARY JO  
SIBBITT, )

Defendants. )

Case No.

04-2181-D An

Complaint for a Permanent  
Injunction, Other Equitable  
Relief, and Civil Monetary  
Penalties

I. SUMMARY

1. From at least June 2003 through the present, FxTrade Financial, LLC (FxTrade), by and through Jeffrey A. Mischler (Mischler), Lee N. Romano II (Romano), and Mary Jo Sibbitt (Sibbitt) (collectively Defendants), has been soliciting retail investors to open accounts for trading off-exchange foreign currency. Thus far, Defendants have solicited no less than \$125,000 from at least two investors.

2. It appears Defendants deposited most of that money into one or more of Defendants' personal checking accounts. Only \$52,000 of the \$125,000 solicited from investors ever made it to an FxTrade trading account at a futures commission merchant (FCM). Over a two-month period, Defendant Mischler lost approximately one-third of that amount trading foreign currency futures contracts and withdrew the other two-thirds. Although both investors have requested repeatedly that FxTrade return their initial investment, they have yet to receive it.

3. Defendants have fraudulently solicited, made material misrepresentations and misappropriated investor funds, all in violation of Section 4b(a)(2)(i) and (iii) of the Commodity Exchange Act, as amended (the Act), 7 U.S.C. § 6b(a)(2)(i) and (iii) (2001).

4. Accordingly, the Commodity Futures Trading Commission (the Commission) brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act. In addition, the Commission seeks disgorgement of Defendants' ill-gotten gains, restitution for damages proximately caused by Defendants' violations, civil monetary penalties and such other relief as the Court may deem necessary and appropriate.

5. Unless restrained and enjoined by the Court, Defendants likely are to 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

6. The Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1, which authorizes Plaintiff 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.

7. Section 2(c)(2)(B) and (C) of the Act, 7 U.S.C. § 2, confers on the Commission jurisdiction, including anti-fraud jurisdiction, over the transactions in foreign currency futures contracts offered and/or entered into by defendants for or on behalf of their retail investors, as alleged in this Complaint.

8. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because certain Defendants are found in, inhabit, or transact business in the Western District of Tennessee and certain of the transactions, acts, practices and courses of business alleged occurred, are occurring, and/or are about to occur within this District.

### III. THE PARTIES

9. Plaintiff Commission is a federal independent regulatory agency that is charged with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et. seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et. seq.* The Commission maintains its principal office at Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581.

10. FxTrade is a Tennessee company with its principal place of business at 8653 Heatherly Cove, Germantown, TN 38138. FxTrade has never been registered with the Commission in any capacity.

11. Jeffrey A. Mischler is an individual with a last known address of 8653 Heatherly Cove, Germantown, TN 38138. He has never been registered with the Commission.

12. Lee N. Romano, II is an individual with last known mailing addresses of 6403 Main Street, Union, IL 60180 and 1700 S. Eastwood Drive, P.O. Box 728, Woodstock, IL 60098 (c/o Brown & Co.). He has never been registered with the Commission.

13. Mary Jo Sibbitt is an individual with a last known address of 21 W. 611 Glen Park Road, Glen Ellyn, IL 60137. She has never been registered with the Commission.

### IV. FACTUAL BACKGROUND

#### A. Solicitation

14. From at least June 2003 through the present, Defendants have solicited individuals to invest in FxTrade for the purported purpose of trading foreign currency.

15. In June 2003, Defendant Sibbitt approached a prospective investor ("Investor One") about investing in a company called "FX." Sibbitt informed Investor One that Defendant Romano and another man operated FX. Investor One soon learned that "FX" was Defendant FxTrade. According to Sibbitt, FxTrade had an established track record of success in trading foreign currency. In addition, Sibbitt told Investor One that she invested in FxTrade and made approximately \$50,000 in only three weeks.

16. On numerous occasions shortly thereafter, Investor One met with both Sibbitt and Romano. Sibbitt and Romano told Investor One that FxTrade investments are "100% guaranteed." Romano also stated that FxTrade pays a monthly commission or finder's fee of one percent to anyone who introduces additional investors to FxTrade.

17. Romano informed Investor One that FxTrade requires a minimum initial investment of \$100,000, but Investor One was willing to invest only \$25,000. To meet the alleged minimum investment requirement and prove to Investor One that FxTrade could generate a significant investment return, Romano offered to pool \$75,000 of his own funds with Investor One's money.

18. On June 27, 2003, Investor One entered into an agreement with Romano to invest \$25,000 trading foreign currency through FxTrade for a one-month period. In turn, Romano promised to return Investor One's \$25,000 investment, along with a guaranteed return, on July 30, 2003.

19. On June 28, 2003, per Romano's instructions, Investor One wired \$25,000 to Romano's personal bank account. Romano told Investor One that her funds, along with \$75,000 of his funds, would be invested with FxTrade in Memphis, Tennessee.

20. In July 2003, Sibbitt and Romano explained to Investor One that FxTrade uses an advisory software program that generates recommendations regarding the type and timing of foreign currency transactions.

21. After repeated requests, Sibbitt and Romano provided Investor One an FxTrade brochure in August 2003. They also suggested that Investor One consult FxTrade's website for additional information.

22. In August 2003, Investor One shared with a friend (Investor Two) the FxTrade information she had received from Sibbitt and Romano. During that conversation, Investor Two indicated to Investor One that she would like to invest in FxTrade. Investor One put Investor Two in contact with Mischler, who mailed an FxTrade account agreement to Investor Two.

23. On August 25, 2003, Investor Two entered into an agreement with FxTrade to trade \$100,000 in foreign currency for a period of six months. As part of the agreement, Investor Two was to receive certain guaranteed payments.

24. On or about August 26, 2003, per Mischler's instructions, Investor Two wired \$100,000 to FxTrade's bank account in Memphis, Tennessee. Mischler confirmed receipt of the \$100,000 via e-mail on August 27, 2003.

#### **B. Misrepresentations**

25. Sibbitt's representations to Investor One were false and made only to induce Investor One to invest in FxTrade. For example, Sibbitt falsely claimed that she had made significant profits investing in FxTrade. Investor One later learned that Sibbitt never invested any money with FxTrade.

26. When Romano and Sibbitt told Investor One about FxTrade in June 2003, the company was not even in existence. It was not until July 11, 2003 that Mischler filed FxTrade's Articles of Incorporation with the State of Tennessee.

27. The FxTrade brochure that Sibbitt and Romano provided to Investor One is also fraudulent. To create its brochure, FxTrade merely compiled copies of other foreign currency company web pages. FxTrade "borrowed" the exact language, format, and photographs of people contained on those websites in an effort to demonstrate their purported legitimacy.

28. Although Sibbitt and Romano directed customers to it for information, FxTrade's website has been "down for Database Maintenance" since at least mid-July 2003.

29. Further, Mischler did not establish an appropriate foreign currency futures contracts' trading account in FxTrade's name at Forex Capital Markets ("FXCM"), a registered FCM, until the end of August 2003. Even then, the account traded for only about six weeks during September and the first two weeks of October 2003.

### C. Misappropriation

30. While FxTrade has solicited at least \$125,000 from investors, Defendants deposited only \$50,000 into FxTrade's account at FXCM.

31. During the trading life of FxTrade's account, September and October 2003, Mischler lost approximately \$17,000 trading foreign currency futures contracts and took out the remaining \$35,000 in a series of withdrawals.

32. FxTrade and/or Romano have failed to return Investor One's \$25,000 investment on July 30, 2003 as called for in their agreement. Investor One contacted Romano and Mischler in August 2003 to find out why she had not received her \$25,000 investment and minimum ten

percent return on the investment. Romano and Mischler gave Investor One numerous excuses for the past due payout and assured her that payment was forthcoming.

33. In September 2003, Romano revealed to Investor One that he had not invested her money in FxTrade, but had deposited it in an unidentified New York fund. Romano asked Investor One to be patient, claiming that he would double or triple her investment.

34. To date, despite repeated requests, Investor One still has not received her initial investment back. The only money Investor One has received from FX Trade was a \$5,000 check.

35. After making an initial payment of \$5,000 in September 2003, FxTrade also failed to make other payments to Investor Two or to refund Investor Two's initial investment. Since September 2003, the only payment Investor Two has received is a \$20,000 check dated December 30, 2003. In February 2004, Investor Two specifically asked for a refund of her money. To date, she still has not received her initial investment back.

## V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

### COUNT I

#### Violations of § 4b(a)(2)(i) and (iii) of the Act: Fraud and Deceit in the Sale of Foreign Currency Futures Contracts

36. The allegations set forth in paragraphs 1 through 35 are realleged and incorporated herein by reference.

37. From at least June 2003 and continuing to the present, Defendants: (i) cheated or defrauded or attempted to cheat or defraud other persons; and (ii) willfully deceived or attempted to deceive other persons, in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of any other persons, where such contracts for future delivery were or could be used for the purposes set forth

in Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2), all in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii).

38. In the course of their solicitation of investors to invest money with them, Defendants knowingly made material misrepresentations and omitted material facts including, but not limited to, the misrepresentations set forth at paragraphs 15-20, and 23 in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii). Defendants also misappropriated investor funds, as set forth at paragraphs 30 – 35, in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii).

39. Each fraudulent misrepresentation and omission and each act of misappropriation, including those specifically alleged herein in paragraphs 1 through 38 above, is alleged as a separate and distinct violation of Section 4b(a)(2) of the Act, 7 U.S.C. § 6(b)(a)(2).

#### VI. RELIEF REQUESTED

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

a) Orders of preliminary and permanent injunctions prohibiting Defendants and any other person or entity associated with them, including any successor thereof, from engaging in conduct violative of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii);

b) An order directing Defendants and any successors thereof to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act, as described herein, and interest thereon from the date of such violations;



c) An order directing Defendants to make full restitution to every person or entity whose funds they received as a result of acts and practices that constituted violations of the Act, as described herein, and interest thereon from the date of such violations;

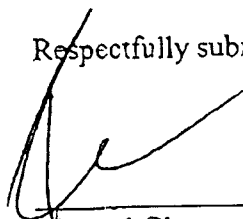
d) An order directing Defendants to make an accounting to the Court of all their assets and liabilities, together with all funds they received from and paid to investors and other persons in connection with transactions, or purported transactions, in foreign currency futures contracts, and all disbursements for any purpose whatsoever of funds received from transactions in foreign currency futures contracts, including salaries, commissions, interest, fees, loans and other disbursements of money and property of any kind from June 2003 to the date of such accounting;

e) An order directing Defendants to pay a civil penalty in the amount of not more than the higher of \$120,000.00 for each violation or triple the monetary gain to Defendants for each violation of the Act;

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

g) Such other and further relief as the Court deems proper.


Respectfully submitted by,



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