UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

UNITED STATES COMMODITY FUTURES TRADING COMMISSION,	
Plaintiff,	Civil Action No. _____
v.	
FX PROFESSIONAL INTERNATIONAL SOLUTIONS, INC., a.k.a. FX PROFESSIONAL SOLUTIONS, LLC, a Florida corporation; GUILLERMO ROSARIO, a.k.a GUILLERMO ROSARIO-COLON, an individual; and PEDRO DE SOUSA, a.k.a. PEDROIZ J. SANZ, an individual,	COMPLAINT FOR PERMANENT INJUNCTION, CIVIL MONETARY PENALTIES, AND OTHER EQUITABLE RELIEF
Defendants.	

Plaintiff, the United States Commodity Futures Trading Commission ("Commission" or "CFTC"), by its attorneys, alleges as follows:

I. SUMMARY

1. Between April 2005 and February 2009, FX Professional International Solutions, Inc., a.k.a. FX Professional Solutions, LLC ("FXP"), through its principals and controlling persons, Guillermo Rosario, a.k.a. Guillermo Rosario-Colon ("Rosario") and Pedro de Sousa, a.k.a. Pedroiz J. Sanz ("de Sousa"), individually and in their capacity as officers, employees, and agents of FXP (collectively "Defendants"), accepted at least

$535,000 from four members of the general public (collectively the "Customers") for the purpose of trading off-exchange foreign currency contracts ("forex").

2. During this period of time, Defendants returned a total of $269,500 to the Customers as purported trading profits, redeemed principal, or other payments. The remaining $265,500 of the Customers' funds is unaccounted for.

3. From May 2005 and continuing through December 2008, Defendants sent to Customers account statements representing that the Customers were making profits trading forex. These account statements were false. After Defendants reported to the Customers, in February 2009, a loss of 0.83%, Defendants confessed to some of the Customers that the monthly account statements sent to the Customers from August 2008 forward were, in fact, false and were generated and sent to the Customers by Defendants for the express purpose of maintaining customer confidence and preventing withdrawal requests beyond Defendants' ability to redeem.

4. By virtue of this conduct and the further conduct described herein, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 1 *et seq*. (2006), as amended by 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).

5. Rosario and de Sousa committed the acts and omissions described herein within the course and scope of their employment at FXP. Therefore, FXP is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Section 1.2 of the

Commission's Regulations ("Regulations"), 17 C.F.R. § 1.2 (2009), as principal for its agents' violations of the Act, as amended by the CRA.

6. Rosario and de Sousa are liable under Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), as controlling persons of FXP for its violations of the Act, as amended by the CRA, because they did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations.

7. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), 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, and to further enjoin Defendants from engaging in certain commodity or forex-related activity. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

8. Unless restrained and enjoined by this Court, Defendants are likely 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

9. Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2006), 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.

10. The Commission has jurisdiction over the conduct and transactions at issue in this case pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2).

11. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1 (2006), because three of the Customers reside and Defendants transacted business in, the Southern District of Florida, and certain transactions, acts, practices, and courses of business alleged in the Complaint occurred, are occurring, and/or are about to occur within this District.

III. PARTIES

12. **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress 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 CFTC maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

13. **FX Professional International Solutions, Inc., a.k.a. FX Professional Solutions, LLC**, was a Florida corporation with its principal place of business listed as 2795 Whisper Lakes Club Circle, Orlando, Florida 32837. FXP was incorporated on

April 25, 2005, and dissolved on September 26, 2008, for failure to file an annual report. FXP was engaged in the business of soliciting and accepting funds from customers for the purpose of entering into margined or leveraged agreements, contracts or transactions in forex on behalf of FXP's customers. FXP was not a financial institution, registered broker dealer, insurance company, bank holding company, investment bank holding company, or the associated person of any such entity. FXP was wholly-owned and operated by Rosario and de Sousa, both of whom held themselves out to the public as the owners and operators of FXP. FXP has never been registered in any capacity with the Commission.

14. **Guillermo Rosario, a.k.a. Guillermo Rosario-Colon**, was an incorporator, officer, director and registered agent of FXP and resides in Coral Gables, Florida. Rosario is also listed on the FXP disclosure documents and account statements as FXP's Director of Managed Accounts. Rosario solicited and interacted with customers and had control over funds deposited with FXP. Rosario has never been registered in any capacity with the Commission.

15. **Pedro de Sousa, a.k.a. Pedroiz J. Sanz**, was an incorporator, officer, and director of FXP and resides in Orlando, Florida. De Sousa is also listed on the FXP disclosure documents and account statements as FXP's Director of Trading. De Sousa solicited and interacted with customers and had control over funds deposited with FXP. De Sousa has never been registered in any capacity with the Commission.

IV. FACTS

16. Beginning in April 2005, Defendants solicited the Customers to trade forex through FXP's predecessor, FX Professional Solutions, LLC, ("FX Professional") and later through FXP. Defendants approached these prospective customers through friends and acquaintances and told the Customers that Defendants had been trading forex for a number of years and had been very successful.

17. Defendants represented to the Customers that between 2002 and 2005, Defendants had annual forex trading profits of 21% to 85% with never a losing year. These figures were communicated to the Customers by, among other methods, various iterations of a "Risk Disclosure Document & Managed Account Agreement" ("Disclosure Document") given by Defendants to each of the Customers. However, the various Disclosure Documents given to the Customers by Defendants contained inconsistent profit representations for the same periods of time. In addition, Rosario asserted to one of the Customers that he had devised a system of trading forex that he was confident would, at a minimum, consistently return 20% in annual profits.

18. Even though Defendants claimed that FXP and its predecessor, FX Professional, earned profits trading forex as early as 2002, FX Professional was not formed until 2004, and FXP was not incorporated until 2005. Further, the actual forex trading conducted by Rosario and de Sousa for themselves or in the name of FXP during this time period resulted in consistent annual net losses.

19. Between April 2005 and September 2008, based on Defendants' written and verbal claims of forex trading success, the Customers gave Defendants a total of

$535,000 with which to trade forex. This included $50,000 provided by one of the Customers to Defendants in or about August 2008. During this period of time, Defendants returned a total of $269,500 to the Customers as purported trading profits, redeemed principal, or other payments. It is unclear how much, if any, of the Customers' funds was ever traded by Defendants as intended, thus the remaining $265,500 of the Customers' funds remain unaccounted for.

20. Beginning in May 2005 and continuing to February 2009, Defendants sent false monthly account statements to the Customers. With very limited exceptions, these statements claimed profits of between 0.16% and 2.55% every month when, in fact, actual forex trading conducted by Defendants during this period (with or without the Customers' funds) resulted in net monthly losses more than 75% of the time.

21. Between July 2008 and February 2009 alone, Defendants issued at least thirty (30) separate account statements to the Customers containing false information regarding account activity, account balances, and profits earned. Specifically, these account statements reflected net trading profits that bore no relation to the actual forex trading conducted by Defendants during this period. For example, the statements sent to the Customers in September 2008 (for trading purportedly conducted on behalf of the Customers in August 2008) reported a monthly net profit of 1.13% (or $1,965.05 total for all four Customers) when, in fact, Defendants' actual forex trading that month resulted in total net losses of $37,145.25. Conversely, while Defendants reported a monthly net loss to the Customers in February 2009 (for purported trading in January), Defendants' actual trading that month resulted in net profits of $940.38.

22. Beginning in February 2009, each of the Customers demanded that Defendants return his/her money. Defendants told at least three of the four Customers that during the latter half of 2008 and into 2009, Defendants had incurred substantial losses trading forex for the Customers and that all of the Customers' money was gone. When one of the Customers requested to see Defendants' trading records showing the claimed losses, Rosario refused on the basis of "customer confidentiality."

23. In April 2009, one of the Customers asked de Sousa why FXP continued to send monthly statements indicating profitable trading during the latter half of 2008 if, in fact, FXP was losing money during this period. De Sousa replied that Rosario was afraid that if they told customers about the losses, customers would request to withdraw their money, and that Defendants would not have the funds to honor the withdrawal requests. For this reason, according to de Sousa, beginning in or about September 2008, Defendants "started faking the statements" that they sent to the Customers. In fact, Defendants had been issuing false statements from as far back as 2005.

24. Despite multiple requests to Defendants, the Customers have not received the outstanding balance of the money they paid to Defendants for forex trading.

25. Neither Defendants nor the futures commission merchants that were the counterparties to the forex transactions entered into and/or contemplated by Defendants and the Customers were financial institutions, registered broker dealers (or their associated persons), insurance companies, bank holding companies, or investment bank holding companies.

26. Neither Defendants nor the Customers who provided funds to the Defendants were "eligible contract participants" as that term is defined in the Act. *See* Section 1a(12)(A)(v), and (xi) of the Act, 7 U.S.C. § 1a(12)(A)(v), (xi) (an "eligible contract participant," as relevant here, is a corporation or an individual with total assets in excess of $10 million).

27. Defendants traded foreign currency on a margined or leveraged basis in the trading accounts containing customer funds. The foreign currency transactions conducted by Defendants neither resulted in delivery within two days nor created an enforceable obligation to deliver between a seller and a buyer that had the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these foreign currency contracts remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

Violations of Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C)
(Fraud by Issuance of False Statements)

28. The allegations set forth in paragraphs 1 through 27 are realleged and incorporated herein by reference.

29. Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C), make it unlawful

> for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement,

> contract, or transaction subject to paragraphs (1) and (2) of section 5a(g), that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market – (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person.

Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, apply to the foreign currency transactions, agreements or contracts offered to or entered into by Defendants for or on behalf of FXP's customers. *See* Section 2(c)(2)(C)(iv) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iv).

30. As set forth above, from at least June 18, 2008, through February 2009, in or in connection with forex contracts, made or to be made, for or on behalf of, or with, other persons, Defendants cheated or defrauded or attempted to cheat or defraud customers or prospective customers and willfully made or caused to be made false reports or statements to another person by, among other things, knowingly distributing reports and statements to the Customers that contained false trading activity, false account values, false returns on investment, and other misinformation, all in violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

31. Defendants Rosario and de Sousa engaged in the acts and practices described above knowingly and with reckless disregard for the truth.

32. From at least June 18, 2008 through February 2009, Rosario and de Sousa controlled FXP, directly or indirectly, and did not act in good faith or knowingly induced,

directly or indirectly, FXP's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Rosario and de Sousa are liable for FXP's violations of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

33. The foregoing acts, misrepresentations, omissions, and failures of Rosario and de Sousa occurred within the scope of their employment with FXP; therefore, FXP is liable for those acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2009).

34. Each issuance of a false account statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

VI. RELIEF REQUESTED

WHEREFORE, the CFTC respectfully requests that the Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and pursuant to its own equitable powers, enter:

a) An order finding that Defendants violated Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C);

b) An order of preliminary and permanent injunction prohibiting Defendants, and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any Defendant, including any successor thereof, from engaging, directly or indirectly:

(i) in conduct in violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C); and

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

(iii) entering into any transactions involving commodity 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) (2009)) ("commodity options"), and/or foreign currency (as described in Section 2(c)(2)(C)(i) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 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;

(iv) having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;

(v) 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 commodity futures, options on commodity futures, commodity options, and/or forex contracts;

(vi) soliciting, receiving, or accepting any funds from any person for purposes of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;

(vii) 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) (2009); and

(viii) acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2009)), 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) (2009).

c) An order directing Defendants, as well as any successors, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices that constitute violations of the Act, as amended by the CRA, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

d) An order directing Defendants to make full restitution to every person or entity whose funds they received or caused another person or entity to receive as a result of acts and practices that constituted violations of the Act, as amended by the CRA, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

e) 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, described herein;

f) An order directing each Defendant to pay a civil monetary penalty in the amount of the higher of (1) triple the monetary gain to each Defendant for each violation

of the Act, as amended by the CRA, described herein or (2) $140,000 for each violation of the Act committed on or after October 23, 2008 and $130,000 for each violation committed before October 23, 2008, plus post-judgment interest;

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

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

Dated: _____ ___, 2010

Respectfully submitted,

ATTORNEYS FOR PLAINTIFF U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1151 21st Street NW
Washington, DC 20581
(202) 418-5000 (main)
(202) 418-5531 (fax)

s/ Matthew Elkan
_____
Matthew Elkan
Special Bar No. A5501023
DC Bar No. 413161
(202) 418-5398 (direct)
melkan@cftc.gov

Daniel C. Jordan
Special Bar No. A5501473
(202) 418-5339 (direct)
djordan@cftc.gov

Nia Vroustouris
Special Bar No. A5501470
(202) 418-5268 (direct)
evroustouris@cftc.gov