

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3
4 SOUTHERN DIVISION

5 COMMODITY FUTURES TRADING)
6 COMMISSION,)

7 Plaintiff,)

8 vs.)

9 MAS FX LLC, a Delaware Limited)
10 Liability Company, formerly known as)
11 MAS FINANCIAL SERVICES, INC.,)
12 FX ADVISORS, LLC, a Delaware)
13 Limited Liability Company, FX)
14 ADVISORS PACIFIC, LLC, a)
15 Delaware Limited Liability Company,)
16 FX ADVISORS EAST, LLC, a)
17 Delaware Limited Liability Company,)
18 GLOBAL EQUITY MANAGEMENT)
19 GROUP, LLC, a Delaware Limited)
20 Liability Company, BRIAN MOORE,)
21 CHRISTIAN WEBER, DENNIS)
22 HEYBURN, RON ROZILLIO, DON)
23 LAKIN AND FARZAD NAFEIY,)

24 Defendants.

Case No. SACV02-173

COMPLAINT FOR
INJUNCTIVE AND OTHER
EQUITABLE RELIEF AND
FOR CIVIL PENALTIES
UNDER THE COMMODITY
EXCHANGE ACT, AS
AMENDED, 7 U.S.C. §§ 1-25

25 I.

26 JURISDICTION AND VENUE

27 1. Section 2(c)(2)(B) (i) and (ii) of the Commodity Exchange Act, as
28 amended (“Act”), 7 U.S.C. § 2 (2001), corresponding to the Commodity Futures
Modernization Act of 2000, Appendix E of Pub. L. No. 106-554, 114 Stat. 2763,
grants plaintiff, the Commodity Futures Trading Commission (“Commission” or

1 “CFTC”), jurisdiction over certain transactions in foreign currency that are
2 contracts for the sale of a commodity for future delivery, including the transactions
3 alleged in this Complaint. The Act prohibits fraud in connection with the trading
4 of such commodity futures contracts and establishes a comprehensive system for
5 regulating the purchase and sale of such commodity futures contracts. This Court
6 has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1
7 (2001), which authorizes the Commission to seek injunctive relief against any
8 person whenever it shall appear that such person has engaged, is engaging, or is
9 about to engage in any act or practice constituting a violation of any provision of
10 the Act or any rule, regulation or order thereunder.

11 2. Venue properly lies with this Court pursuant to Section 6c(e) of the
12 Act, 7 U.S.C. § 13a-1(e) (2001), in that Defendants are found in, inhabit, or
13 transact business in this District, and the acts and practices in violation of the Act
14 have occurred, are occurring, or are about to occur within this district, among other
15 places.

18 II.

19 SUMMARY

20 3. From at least January 2001 to the present (“relevant time period”), the
21 defendants MAS FX, LLC, formerly known as MAS Financial Services, Inc.
22 (“MAS FX”), FX Advisors, LLC (“FXA”), FX Advisors Pacific, LLC (“FXP”),
23 FX Advisors East, LLC (“FXE”), Global Equity Management Group, LLC
24 (“GEM”), Brian Moore (“Moore”), Christian Weber (“Weber”), Dennis Heyburn
25 (“Heyburn”), Ron Rozillio (“Rozillio”), Don Lakin (“Lakin”) and Farzad Nafeiy
26 (“Nafeiy”) (collectively, the “defendants”) have solicited and obtained at least five
27 million dollars from at least 135 retail customers in the United States, Australia
28 and New Zealand (“investors”) to trade illegal off-exchange foreign currency

1 futures contracts. Defendants also have cheated, defrauded and deceived investors
2 by, among other practices, conducting trading that was unauthorized by the
3 investors, fraudulently misrepresenting the profit potential and risk of loss from
4 trading in foreign currency futures contracts, failing to disclose or minimizing the
5 effect of the commissions and fees charged by Defendants on the investors ability
6 to profit from trading the foreign currency products offered by Defendants, and
7 making other material misrepresentations to induce the investors to invest, in
8 violation of Sections 4(a) and 4b(a)(i) and (iii) of the Act, 7 U.S.C. §§ 6(a) and
9 6b(a)(i) and (iii), (2001), and Commission Regulation 1.1(b)(1) and (3), 17 C.F.R.
10 § 1.1(b)(1) and (3) (2001).

11 4. Defendants Moore, Rozillio, Weber and Heyburn operated and
12 operate part of their scheme through four corporate entities – MAS FX, FXA, FXP
13 and FXE – which share ownership, offices, account documentation, and employees
14 and commingle the funds received from investors, and therefore operate as a
15 common enterprise. (These four corporate defendants are hereinafter referred to
16 collectively as the “FX Common Enterprise entities” or the “FX Common
17 Enterprise.”)

18 5. Defendants Moore, Weber, Rozillio and Heyburn, as controlling
19 persons of the FX Common Enterprise entities, are liable for the violations by the
20 FX Common Enterprise entities of Sections 4(a) and 4b(a)(i) and (iii) of the Act
21 and Commission Regulation 1.1(b)(1) and (3), pursuant to Section 13(b) of the
22 Act, 7 U.S.C. § 13c(b) (2001). Defendants Lakin and Nafeiy, as controlling
23 persons of GEM, are liable for the violations by GEM of Sections 4(a) and 4b(a)(i)
24 and (iii) of the Act and Commission Regulation 1.1(b)(1) and (3), pursuant to
25 Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001).

26 6. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1
27 (2001), Plaintiff Commission brings this action to enjoin the unlawful acts and
28 practices of defendants and to compel their compliance with the provisions of the

1 Act and Regulations thereunder. In addition, the Commission seeks disgorgement
2 of the defendants' ill-gotten gains, restitution to investors, civil monetary penalties,
3 the appointment of an equity receiver, and such other equitable relief as the Court
4 may deem necessary or appropriate.

5 7. Unless enjoined by this Court, the defendants are likely to continue to
6 engage in the acts and practices alleged in this Complaint and similar acts and
7 practices, as more fully described below.

8 III.

9 THE PARTIES

10 8. Plaintiff Commodity Futures Trading Commission is an independent
11 federal regulatory agency that is charged with responsibility for administering and
12 enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2001), and the
13 Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2001).

14 Common Enterprise Entities

15 9. Defendant MAS FX, LLC is a Delaware limited liability company
16 formed in October 1999. Prior to October 1999, it was known as MAS Financial
17 Services, Inc. In late 1999 or early 2000, MAS FX opened an office at 18200 Von
18 Karman Ave., Suite 790, Irvine, CA 92612 and a second office at One World
19 Trade Center, 85th Floor, Suite 8536, New York, NY 10048. It maintained its New
20 York office until September 11, 2001. Its principal place of business is now at the
21 Irvine, California location. MAS FX purportedly is and has been engaged in the
22 business of trading foreign currency spot contracts principally on behalf of FXA,
23 FXP, FXE and GEM. It has never been registered with the Commission in any
24 capacity. Rozillio, Moore and Weber are the owners and managing members of
25 MAS FX.

26 10. Defendant FX Advisors, LLC is a Delaware limited liability company
27 formed in April 2000 and its current address is 18200 Von Karman Ave., Suite
28 790, Irvine, CA 92612. Its principal place of business was 2967 Michaelson Drive,

1 Suite G221, Irvine, CA 92612, until approximately April 2001, when it began
2 operating out of MAS FX's office space in Irvine. It is the holding company for
3 FXP and FXE and purportedly is engaged in the business of trading foreign
4 currency spot contracts on behalf of the retail public. It has never been registered
5 with the Commission in any capacity. Moore, Weber and Rozillio were the owners
6 and managing members of FXA until April 2001, when they transferred their
7 ownership interests to Heyburn. Heyburn is currently the sole owner of FXA.

8 11. Defendant FX Advisors Pacific, LLC is a Delaware limited liability
9 company formed on November 6, 2000. It was located at 2967 Michaelson Drive
10 Suite G221 Irvine, CA 92612, until approximately April 2001, when it began
11 operating out of MAS FX's office space in Irvine. It operated out of MAS FX's
12 office space in Irvine, California until approximately June 2001, when it moved to
13 its current address of 4950 Macarthur Blvd., Newport Beach, CA 92660. FXP
14 purportedly is engaged in the business of trading foreign currency spot contracts on
15 behalf of the retail public. It has never been registered with the Commission in any
16 capacity. Rozillio, Moore and Weber were the owners and managing members of
17 FXP and jointly owned 100% of the company until April 16, 2001, when they sold
18 their ownership interest to Heyburn. Heyburn is currently the sole owner of FXP.

19 12. Defendant FX Advisors East, LLC is a Delaware limited liability
20 company formed on November 6, 2000. It was located at 200 Public Square,
21 #2950 Cleveland, Ohio 44114, until its office was closed in June 2001. FXE
22 purportedly was engaged in the business of trading foreign currency spot contracts
23 on behalf of the retail public. It has never been registered with the Commission in
24 any capacity. Rozillio, Weber, Moore and another individual were the owners and
25 managing members of FXE until April 2001, when Rozillio, Weber and Moore
26 sold their 75% ownership interest in the company to Heyburn. Thereafter,
27 Heyburn owned 75% of the company and another individual owned 25%, until the
28 FXE office was closed in or about June 2001.

1 Other Entity

2 13. Defendant Global Equity Management Group, LLC is a Delaware
3 limited liability company formed in April 2001 and located at 3 Park Plaza, Suite
4 320, Irvine, CA 92614. It is purportedly engaged in the business of trading foreign
5 currency spot contracts on behalf of the retail public. Lakin and Nafeiy were the
6 owners and managers of the company until late October or early November 2001
7 when Nafeiy left the company. Lakin is currently the sole owner and manager of
8 GEM.

9 Individuals

10 14. Defendant Brian Moore resides at 4539 Orrington, Corona Del Mar,
11 California 92625. Moore was a co-owner of FXA, FXP and FXE from January
12 2000 until April 2001, when he sold his ownership interests in the companies to
13 Heyburn. Since at least January 1, 2001 Moore has been a co-owner of MAS FX.
14 Moore applied to the Commission in 1995 and 1998 to become an associated
15 person (“AP”), and be listed as a principal, of several firms. These applications
16 were denied by the National Futures Association (“NFA”), which, under Sections
17 8a(10) and 17 of the Act, 7 U.S.C. § 12a(10) and 210 (2001), was delegated by the
18 Commission the responsibility and the authority to process and act as custodian of
19 the official Commission registration records for all categories of registration under
20 the Act. The applications were denied because litigation filed against Moore and
21 judgments entered against him, which involved unauthorized trading of securities
22 and options on foreign currencies, showed that Moore “had engaged in a pattern of
23 conduct that demonstrated his inability to comply with the Act.”

24 15. Defendant Christian Weber resides at 10226 Swallow Ave., Fountain
25 Valley, CA 92708. He was a co-owner of FXA, FXE and FXP, until April 2001,
26 when he sold his ownership interests in the three companies to Heyburn. Since at
27 least January 1, 2001, Weber has been a co-owner of MAS FX. Weber has never
28 been registered with the Commission in any capacity.

1 16. Defendant Dennis Heyburn resides at 154 White Cap Lane, Newport
2 Coast, CA 92557. He purchased FXA and FXP from Rozillio, Moore and Weber
3 in April 2001 and is currently the sole owner of both companies. He also
4 purchased 75% of FXE from Moore, Rozillio and Weber in April 2001. Heyburn
5 has never been registered with the Commission in any capacity.

6 17. Defendant Ron Rozillio resides at 390 White Cap Lane, Newport
7 Coast, California 92657. He was a co-owner of FXA, FXP and FXE until April
8 2001, when he sold his ownership interests in these companies to Heyburn. Since
9 January 1, 2001, Rozillio has been a co-owner of MAS FX. Rozillio was
10 registered as an AP of several registered futures commission merchants (“FCM”),
11 commodity trading advisors (“CTA”) and commodity pool operators (“CPO”),
12 from April 1995 through June 1996. He was then registered as an AP with
13 Millennium Asset Management LLC, a registered CTA, from September 1999
14 through November 2000. Rozillio is not currently registered with the Commission
15 in any capacity.

16 18. Defendant Don Lakin resides at 2187 Cartwheel Circle, Corona, CA
17 92880. Lakin solicited customers to invest in foreign currency futures contracts
18 through FXP, FXE and MAS FX and worked out of MAS FX’s office space from
19 September 2000 through April 2001, when he left and became an owner and
20 operator of GEM with Nafeiy. Lakin was registered as an AP of Newhall Discount
21 Futures and Options, which was a registered introducing broker (“IB”) at the time,
22 from January 2000 through April 2000, and an AP of Main Street Trading
23 Company, which was a registered CTA and CPO at the time, from April 2000 until
24 August 2000. Lakin has been registered with the Commission as a temporary AP
25 of Strategic Equity Management, LLC, a temporary guaranteed IB, since
26 November 12, 2001.

27 19. Defendant Farzad Nafeiy resides at 1110 Victoria A 101 C, Costa
28 Mesa, CA 92627. He was a senior broker of FXP in early 2001 and was an owner

1 and manager of GEM from approximately May 2001 until late October or early
2 November 2001. Nafeiy was registered as an AP of several registered entities
3 from March 1990 through April 1998. In June 1998, Nafeiy again applied for
4 registration as an AP of Newhall Discount Futures, but the NFA denied his
5 application due to the existence of a criminal felony drug conviction in May 1998.
6 Nafeiy is not currently registered with the Commission in any capacity.

7 **IV.**

8 **FACTS**

9 **Solicitation of Customers**

10 20. Since at least January 2001 to the present, the FX Common Enterprise
11 entities, led by defendants Moore, Weber, Rozillio and Heyburn, and GEM, led by
12 Lakin and Nafeiy, have solicited the retail public in the United States, Australia
13 and New Zealand to buy and sell foreign currency (“forex”) futures contracts in
14 order to speculate on the movement of foreign currency prices. The FX Common
15 Enterprise entities and GEM have obtained at least five million dollars from at
16 least 135 investors since January 2001. Many of the FX Common Enterprise’s and
17 GEM’s investors are unsophisticated investors with little investment experience
18 who are unfamiliar with foreign currency transactions.

19 21. The FX Common Enterprise and GEM operated boiler-rooms,
20 employing “telemarketers” hired through newspaper ads to cold call potential
21 investors identified on lead lists. The telemarketers feverishly work in an
22 environment of intimidation and under a constant threat of being fired in an effort
23 to obtain as much money as possible from investors.

24 22. Telemarketers at FX Common Enterprise entities and GEM receive a
25 script of sales pitches that they are to read to potential investors over the telephone
26 or are instructed what to say to potential investors over the telephone to persuade
27 them to invest. The telemarketers solicit the individuals to “invest in foreign
28 currency” through FXP, FXE or GEM. The potential investors understand this to

1 be an opportunity to take a position in the value of foreign currency, mainly the
2 euro, relative to the US dollar without taking delivery of foreign currency.

3 23. Based on the script and the instructions they receive, telemarketers
4 fraudulently exaggerate the likelihood of potential profits and minimize the risk of
5 loss to investors. For example, the telemarketers have told some that they can
6 double their money within a short period of time. The telemarketers also have
7 informed potential investors that if the euro made a one point move, the
8 prospective investor could earn \$5,000 on a \$15,000 investment. Telemarketers
9 had no reasonable basis for making these profit claims, particularly because
10 customers routinely lose all or most of their investment. Moreover, defendants'
11 telemarketers do not disclose to potential customers that the foreign currency
12 market is highly speculative and the likelihood of realizing the described profits is
13 remote. On information and belief, none of the FXA and GEM customers ever
14 made any money.

15 24. Telemarketers also use high pressure tactics, incorporating
16 misrepresentations of material fact, to urge potential customers to invest
17 immediately. Among other things, the telemarketers have represented to potential
18 customers that the market is poised to skyrocket and that if they invest "now" they
19 will earn 100% profit on their investments.

20 25. In addition, telemarketers at FXE often falsely inform potential
21 investors that FXE maintains investor accounts at various well-known financial
22 institutions, such as Merrill Lynch, to earn investors' confidence and persuade
23 them to invest.

24 26. If an investor hesitates about whether to invest, defendants'
25 telemarketers inundate him with telephone calls to persuade him to invest.
26 Telemarketers also repeatedly and insistentlly telephone each prospective investor
27 who has received account opening documents until the prospective investor returns
28 a signed form.

1 27. While the account documentation contains some warnings of the risks
2 of investing in foreign currency transactions, the warnings it contains are
3 inconsistent with and vitiated by the telemarketers' promises.

4 28. Once a potential investor indicates an interest in investing, the
5 telemarketer turns the potential investor over to one of the other supervisors or
6 "senior brokers," such as Lakin, Nafeiy or Heyburn, to "close" the deal.

7 29. FXP, FXE and GEM investors customarily execute a Foreign
8 Exchange Agreement and a Limited Power of Attorney and are then instructed to
9 wire transfer their funds to a bank account in the name of FXP, FXE or GEM at a
10 bank where the FX Common Enterprise and GEM have maintained bank accounts
11 for the receipt of customer funds.

12 30. After an investor makes an initial investment, the defendants'
13 telemarketers quickly urge the investor to send additional funds. Some
14 telemarketers orally misrepresent that a particular investor's account is earning
15 large profits and make statements to customers that the only way to make money is
16 to quickly invest more money. These statements convinced some investors –
17 temporarily – that investing in foreign currency contracts was an easy way to make
18 money.

19 31. When positions lose value, the defendants' telemarketers repeatedly
20 pressure investors to send funds for new trades, which are represented to be sure
21 ways to recover their losses and to earn large profits.

22 32. However, due to FXE and FXP's commission structure and the spread
23 between the prices at which the FX Common Enterprise and GEM allowed
24 investors to buy and sell foreign currency, it was extremely difficult for investors
25 to break even, let alone earn any profits.

26 33. MAS FX makes some of its money off of the bid/ask spread, which is
27 the price differential between the prices they charged investors to buy and sell the
28 same currency. MAS FX charged a wider bid/ask spread than the one they

1 obtained from the banks and brokerage houses they dealt with in the interbank
2 market. Given the customers' relative lack of creditworthiness and small size of
3 their accounts, a wider spread might be expected. However, on information and
4 belief, customers did not understand that they were getting a less favorable bid/ask
5 spread than that available in the interbank market.

6 34. FXE, FXP and GEM charge investors a 0.2% (two-tenths of one
7 percent) round-turn commission on each trade. The commission is levied on the
8 notional (leveraged) amount of the trade. The investors could leverage their
9 investments by a factor of at least ten. At that level, investors paid a round-turn
10 commission of 2.0% (0.2% commission * 10 times leverage = 2.0% commission).
11 If the investor uses higher factors of leverage, commissions alone would consume
12 an even greater portion of his risk capital. In fact, the investors could leverage
13 their investments by as much as 85 times or more, meaning that in some instances
14 the investors could be charged commissions of 17% or more on a single round-turn
15 trade. If an investor managed to cover the bid/ask spread and offset his open
16 position at the same price as he established it, his risk capital would be exhausted
17 after a small number of trades just from the imposition of commissions. On
18 information and belief, FXP, FXE and GEM did not explain the effect of this
19 commission structure to investors, including how unlikely it was that their
20 investment would break even let alone earn a profit.

21 35. While they were brokers at FXP, Lakin and Nafeiy told some
22 investors who had invested with them under the FXP name that they were starting
23 a company called GEM that would handle smaller accounts. Nafeiy claimed that,
24 as a result, GEM would be able to charge them lower fees and commissions than
25 FXP charged. At least one investor decided to invest additional funds with GEM
26 based on this representation. However, after investing additional funds with GEM,
27 the investor discovered that GEM charged him the same commissions and fees as
28 FXP.

1 **Defendants Did Not Follow Investors' Instructions And Engaged In**
2 **Unauthorized Trading**

3 36. Defendants' employees engaged in unauthorized trading of investors'
4 accounts. Some of defendants' brokers, including Lakin, effected trades in
5 investors' accounts without proper authorization, lost funds and threatened
6 investors when investors refused to wire funds for additional margin requirements
7 caused by the losses on the unauthorized trades.

8 37. In at least one instance, Lakin opened an account in a potential
9 investor's name through FXE and began trading the account even though the
10 potential investor informed Lakin not to commence trading his account until the
11 investor confirmed with his bank that he had sufficient funds and wired the funds
12 to the FXE account. Lakin then informed the investor that he had to wire funds to
13 cover the activity that had occurred in the account. When the investor refused,
14 Lakin falsely informed him that he had 4 children and one on the way, and he
15 needed the investor to send money for groceries. Lakin also falsely informed him
16 that he, the investor, was liable for the losses that had occurred in the account.

17 38. The defendants' telemarketers and senior brokers, including Lakin
18 and Nafeiy, at FXP, FXE and GEM, did not comply with investors' instructions to
19 place safeguards in their accounts known as "stop losses" to minimize the risk of
20 loss. As a result, investors received statements showing significant losses in their
21 accounts that exceeded the amounts at which they had instructed the telemarketers
22 and senior brokers to limit their losses. The defendants refused to credit the
23 investors' accounts or refund their money.

24 39. Investors with the FX Common Enterprise and GEM have been
25 unable to withdraw money from their accounts. For example, at least one customer
26 who invested with GEM requested return of the remaining funds in his account
27 after the account started to lose money. The customer telephoned Lakin, who was
28 his broker at GEM, and revoked any authority to trade his account, requesting

1 return of the approximately \$90,000 remaining in his account according to account
2 statements provided by GEM. He faxed Lakin at least four letters requesting his
3 money back. Lakin ignored the customer's requests and did not return the funds in
4 his account until several months later when the customer's account balance was
5 \$90. Lakin informed him that the rest of his investment was lost.

6 **Customers' Statements Were Incomplete and Misleading**

7 40. The FX Common Enterprise and GEM provide statements to investors
8 on a daily basis by facsimile or e-mail that show the trade date, the type of
9 currency purportedly traded, the exchange rate, the account balance and the profit
10 and loss in the account, but do not contain any information regarding fees, interest
11 or commissions charged.

12 41. Investors did not understand the statements and asked for clarification,
13 which was not provided. One FXP investor specifically requested statements
14 showing confirmation that actual foreign currency transactions were taking place,
15 but the statements were never provided. Instead, telemarketers at FXP told him
16 that they were unable to provide him with transaction statements because they
17 were pooling his funds with those of other customers and placing block trades.
18 This explanation was false and misleading because defendants would have
19 received trade confirmations for any trades they entered into, including block
20 trades, and could generate statements for investors showing their portion of the
21 trades and the value of their positions.

22 **Defendants' Foreign Currency Transactions Are Illegal Futures**

23 42. FXA, FXE, FXP and GEM purport to offer contracts in "spot" foreign
24 currency to retail investors that operate as follows: on a given date, which is
25 recorded on the investor's statement as the "trade date," an investor acquires a
26 position in a foreign currency at a stated price. A long position is recorded as a
27 bought or "bgt" on the customer's account statement and a short position is
28 recorded as a sold or "sld" on the statement. At a date subsequent to the "trade

1 date,” the position in the currency is offset by the investor entering into an equal
2 but opposite position. The FX Common Enterprise and GEM are the
3 counterparties to these transactions with the retail customers.

4 43. Investors are led to believe that contracts stay open indefinitely until
5 offset. The positions are marked to market each day based on changes in currency
6 rates.

7 44. The foreign currency contracts that defendants offer and sell are
8 futures. The contracts are for future delivery of foreign currencies that are cash
9 settled in US dollars. The prices or pricing formulas are established at the time the
10 contracts are initiated, and may be settled through offset, cancellation, cash
11 settlement or other means to avoid delivery.

12 45. The investors who purchase these futures contracts have no
13 commercial need for the foreign currency. Instead, investors enter into these
14 transactions to speculate and profit from anticipated price fluctuations in the
15 markets for these currencies.

16 46. Investors do not anticipate taking – and do not take – delivery of the
17 foreign currencies they purchase as a consequence of these investments. Investors
18 are required to invest in US dollars, which are never actually converted to another
19 currency. Once the market moves in a favorable direction, an investor expects to
20 liquidate his or her investment by authorizing the sale of the contract and taking
21 the profits. Investors do not negotiate individual purchase agreements with
22 defendants. The rules for margin calls and other terms and conditions of
23 defendants’ contracts, as set by defendants, are standardized.

24 47. Defendants do not conduct their foreign currency futures transactions
25 on or subject to the rules of a board of trade that has been designated by the CFTC
26 as a contract market, nor are defendants’ transactions executed or consummated by
27 or through a member of such a contract market. Defendants do not conduct
28 transactions on a facility registered as a derivatives transaction execution facility.

1 **Four Corporate Defendants Constitute a Common Enterprise**

2 48. In addition to GEM, defendants have conducted their activities
3 through four, interrelated corporate defendants – FXA, FXE, FXP and MAS FX.
4 These corporate defendants have common funds, share employees and office space
5 and have engaged in a scheme as a common enterprise. In addition, some of the
6 same individuals are signatories on bank accounts for more than one corporate
7 defendant.

8 49. FXA and FXP have both operated or are currently operating out of
9 MAS FX’s office space and MAS FX funded FXP’s and FXE’s operating costs
10 when the companies started.

11 50. The same individuals, Moore, Rozillio, Weber and Heyburn, are or
12 have been owners and operators of MAS FX, FXA, FXP and FXE.

13 51. FXA, FXE and FXP send potential investors the same customer
14 account applications, customer agreements and risk disclosure statements.

15 52. FXA, FXP and FXE are all current or former customers of MAS FX.
16 MAS FX purports to enter into foreign currency transactions on their behalf. MAS
17 FX does not enter into foreign currency transactions for the specific accounts of the
18 investors of FXA, FXP and FXE.

19 53. Moore, Rozillio and Weber were authorized signatories on the FXE
20 and FXP customer segregated funds bank accounts and are the authorized
21 signatories on at least three of MAS FX’s bank accounts and Heyburn is the
22 authorized signatory on the FXE and FXP customer segregated bank accounts.

23 54. As a common enterprise, the FX Common Enterprise entities, MAS
24 FX, FXA, FXP and FXE, are jointly and severally liable for the acts of the
25 common scheme.

26 **Controlling Person Liability**

27 55. Moore, Rozillio and Weber were controlling persons of FXA, FXE
28 and FXP and are listed on corporate documents as the principals and co-owners of

1 FXA, FXE and FXP from at least January 2001 through April 2001. Moore
2 managed the daily operations of the FXE office in Cleveland from January 2001
3 until June 2001, when the office closed. Moore, Rozillio and Weber were
4 authorized signatories on the FXE and FXP customer segregated funds bank
5 accounts at Bank of America.

6 56. Currently and since at least January 2001, Moore, Rozillio and Weber
7 have been controlling persons of MAS FX because they manage the daily
8 operations of MAS FX and are listed on corporate documents as the principals and
9 co-owners of MAS FX.

10 57. Heyburn is a controlling person of FXA, FXP and FXE. He has been
11 listed on corporate documents as the principal and sole owner of FXA and FXP
12 since April 2001 and the 75% owner of FXE from April 2001 until June 2001.
13 Heyburn has managed the daily operations of the FXP office since January 2001.
14 Heyburn is the authorized signatory on the FXP and FXE customer segregated
15 bank accounts at Union Bank of California.

16 58. Lakin and Nafeiy are listed on corporate documents as the principals
17 and co-owners of GEM and managed the daily operations of the GEM office until
18 early November 2001, when Nafeiy left the company. Lakin currently manages
19 the daily operations of GEM. Lakin is the authorized signatory on the GEM
20 customer segregated bank account at Union Bank of California. Lakin and Nafeiy
21 as controlling persons of GEM are liable for all of GEM's violations. Thus, Lakin
22 and Nafeiy were the controlling persons for GEM from April 2001 to November
23 2001 and since November 2001, Lakin has been the sole controlling person for
24 GEM.

25 59. Throughout the relevant time period, Moore, Weber, Heyburn and
26 Rozillio, were controlling persons of one or more of the FX Common Enterprise
27 entities, and as controlling persons of the FX Common Enterprise are liable for all
28 of the violations of the FX Common Enterprise.

V.

VIOLATIONS OF THE COMMODITY EXCHANGE ACT

60. Section 2(c)(2)(B)(i)-(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(i)-(ii) (2001), provides that the CFTC shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a contract of sale of a commodity for future delivery, so long as the contract is “offered to, or entered into with, a person that is not an eligible contract participant” unless the counterparty, or the person offering to be the counterparty, is a regulated person or entity, as defined therein.

61. Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12)(A)(xi) (2001), defines an eligible contract participant as an individual who has total assets in excess of: a) \$10 million; or b) \$5 million and who enters the transaction to manage the risk associated with the asset he owns or liability incurred, or reasonably likely to be owned or incurred by the individual. Most, if not all, of the foreign currency futures transactions alleged herein were offered to or entered into with persons who were not eligible contract participants.

62. MAS FX, FXA, FXP, FXE and GEM, the counterparties to the foreign currency futures transactions entered into by investors, as described above, are not proper counterparties for retail foreign currency transactions, and therefore the CFTC has jurisdiction over the transactions in retail foreign currency alleged herein.

COUNT I

**VIOLATIONS OF SECTION 4b(a)(i) AND (iii) OF THE ACT
AND COMMISSION REGULATION 1.1(b)(1) and (3): FRAUD IN THE
SALE OF FUTURES CONTRACTS**

63. Paragraphs 20 through 62 are re-alleged and incorporated herein.

64. During the relevant time period, the FX Common Enterprise entities, MAS FX, FXA, FXP and FXE, and GEM, in or in connection with the orders to make, or the making of, contracts of sale of commodities for future delivery, made

1 or to be made, for or on behalf of any other persons, where such contracts for
2 future delivery were or could be used for the purposes set forth in Section 4b(a) of
3 the Act, 7 U.S.C. § 6b(a) (2001), have cheated or defrauded or attempted
4 to cheat or defraud investors or prospective investors in the FX Common
5 Enterprise and GEM and willfully deceived or attempted to deceive investors or
6 prospective investors by, among other things: promising investors profitable
7 trading while claiming to be able to limit risks; misrepresenting to some investors
8 that they could earn extraordinary profits in a short period of time when existing
9 customers were routinely losing money; misrepresenting to FXE and FXP
10 investors that they could earn profits when, due to the spread between the prices at
11 which the FX Common Enterprise and GEM allowed investors to buy and sell
12 foreign currency and FXE and FXP's commission structure, it was extremely
13 difficult for FXE and FXP investors to break even, let alone earn any profits;
14 misrepresenting to investors that they could only lose a small portion of their
15 investment, if any; misrepresenting to investors that they traded through well
16 known financial institutions such as Merrill Lynch; misrepresenting to investors
17 that they could recoup any losses their accounts had suffered by quickly investing
18 additional funds; and failing to disclose to investors the likelihood of loss
19 associated with investing with them, all in violation of Sections 4b(a)(i) and (iii) of
20 the Act, 7 U.S.C. § 6b(a)(i) and (iii) (2001), and, for such activities occurring on or
21 after October 9, 2001, in violation of Commission Regulation 1.1(b)(1) and (3), 17
22 C.F.R. § 1.1(b)(1) and (3)(2001).

23 65. From January 2001 and continuing to the present, Moore, Rozillio,
24 Weber and Heyburn, as principals and managers of the FX Common Enterprise
25 entities, and Lakin and Nafeiy, as principals and managers of GEM, directly or
26 indirectly controlled the FX Common Enterprise entities and GEM and their
27 schemes and did not act in good faith or knowingly induced, directly or indirectly,
28 the acts constituting the violations described in this Count I. Pursuant to Section

1 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), as described in this Count I, Moore,
2 Rozillio, Weber and Heyburn are liable for the violations described in this Count I,
3 to the same extent as the FX Common Enterprise entities, and Lakin and Nafeiy
4 are liable for the violations described in this Count I, to the same extent as GEM.

5 66. Each fraudulent misrepresentation and omission, including those
6 specifically alleged herein, is alleged as a separate and distinct violation of Section
7 4b of the Act and Commission Regulation 1.1(b).

8 COUNT II

9 VIOLATIONS OF SECTION 4(a) OF THE ACT:

10 SALE OF ILLEGAL OFF EXCHANGE FUTURES CONTRACTS

11 67. Paragraphs 20 through 62 are re-alleged and incorporated herein.

12 68. Since at least January 2001, and continuing to the present, the FX
13 Common Enterprise entities – MAS FX, FXA, FXP and FXE, and GEM – have
14 offered to enter into, executed, confirmed the execution of, or conducted an office
15 or business in the United States for the purpose of soliciting, accepting any order
16 for, or otherwise dealing in transactions in, or in connection with, a contract for the
17 purchase or sale of a commodity for future delivery when: (a) such transactions
18 have not been conducted on or subject to the rules of a board of trade which has
19 been designated or registered by the CFTC as a contract market or derivatives
20 transaction execution facility for such commodity, and (b) such contracts have not
21 been executed or consummated by or through such contract market, in violation of
22 Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001).

23 69. From at least January 2001 and continuing to the present, Moore,
24 Rozillio, Weber, and Heyburn as the owners and operators of the FX Common
25 Enterprise entities, and Lakin and Nafeiy, as the owners and operators of GEM,
26 directly or indirectly controlled the FX Common Enterprise entities and GEM and
27 did not act in good faith or knowingly induced, directly or indirectly, the acts
28 constituting the violations described in this Count II. Pursuant to Section 13(b) of

1 the Act, 7 U.S.C. § 13c(b)(2001), Moore, Weber, Rozillio and Heyburn are liable
2 for the violations of Section 4(a) of the Act, 7 U.S.C. § 6(a), described in this
3 Count II, to the same extent as the FX Common Enterprise entities, and Lakin and
4 Nafeiy are liable for the violations of GEM of Section 4(a) of the Act, 7 U.S.C.
5 § 6(a), described in this Count II, to the same extent as GEM.

6 70. Each foreign currency futures transaction not conducted on a
7 designated contract market or registered derivatives transaction execution facility
8 made during the relevant time period, including but not limited to those conducted
9 by the defendants as specifically alleged herein, is alleged as a separate and distinct
10 violation of Section 4(a) of the Act.

11 71. Any transactions on behalf of investors for which the counterparty is a
12 regulated person or entity as defined in Section 2(c)(2)(B)(i) – (ii) of the Act, 7
13 U.S.C. § 2(c)(2)(B)(i) – (ii) (2001), are specifically excluded from allegations of
14 conduct violating Section 4(a) of the Act in this Count.

15 VI.

16 **RELIEF REQUESTED**

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

- 20 1. orders of preliminary and permanent injunction prohibiting defendants
21 and any other person or entity associated with them, including any
22 successor thereof, from engaging in conduct violative of Sections 4(a)
23 and 4b(a)(i) and (iii), of the Act and Commission Regulation 1.1(b)(1)
24 and (3);
- 25 2. an *ex parte* statutory restraining order and an order of preliminary
26 injunction restraining and enjoining defendants and all persons insofar
27 as they are acting in the capacity of their agents, servants, successors,
28 assigns, and attorneys, and all persons insofar as they are acting in

1 active concert or participation with him who receive actual notice of
2 such order by personal service or otherwise, from directly or
3 indirectly:

- 4 a. destroying, mutilating, concealing, altering or disposing
5 of any books and records, documents, correspondence,
6 brochures, manuals, electronically stored data, tape
7 records or other property of defendants, wherever
8 located, including all such records concerning
9 defendants' business operations;
- 10 b. refusing to permit authorized representatives of the
11 Commission to inspect, when and as requested, any books and
12 records, documents, correspondence, brochures, manuals,
13 electronically stored data, tape records or other property of
14 defendants, wherever located, including all such records
15 concerning defendants' business operations; and
- 16 c. withdrawing, transferring, removing, dissipating, concealing or
17 disposing of, in any manner, any funds, assets, or other
18 property, wherever situated, including but not limited to, all
19 funds, personal property, money or securities held in safes,
20 safety deposit boxes and all funds on deposit in any financial
21 institution, bank or savings and loan account held by, under the
22 control, or in the name of any of the defendants;
- 23 3. an order directing defendants to provide plaintiff immediate and
24 continuing access to their books and records, make an accounting to
25 the Court of all of their assets and liabilities, together with all funds
26 they received from and paid to investors and other persons;
- 27 4. an order appointing an equity receiver to take into his or her
28 immediate custody, control and possession all cash, cashier's checks,

1 funds, assets, and property of defendants, including funds or property
2 of investors, wherever found, whether held in the name of any of the
3 defendants or otherwise, including, but not limited to, all books and
4 records of account and original entry, electronically stored data, tape
5 recordings, all funds, securities, contents of safety deposit boxes,
6 metals, currencies, coins, real or personal property, commodity futures
7 trading accounts, bank and trust accounts, mutual fund accounts,
8 credit card line-of-credit accounts and other assets, of whatever kind
9 and nature and wherever situated, and authorizing, empowering and
10 directing such receiver to collect and take charge of and to hold and
11 administer the same subject to further order of the Court, in order to
12 prevent irreparable loss, damage and injury to investors, to conserve
13 and prevent the dissipation of funds, to remove defendants and to
14 prevent further evasions and violations of the federal commodity laws
15 by the defendants;

16 5. an order directing defendants and any successors thereof, to disgorge,
17 pursuant to such procedure as the Court may order, all benefits
18 received from the acts or practices which constituted violations of the
19 Act, as described herein, and interest thereon from the date of such
20 violations;

21 6. an order directing defendants to make full restitution to every investor
22 whose funds were received by them as a result of acts and practices
23 which constituted violations of the Act, as described herein, and
24 interest thereon from the date of such violations;

25 7. an order directing defendants to pay a civil penalty in the amount of
26 not more than the higher of \$120,000 for each violation or triple the
27 monetary gain to Defendants for each violation of the Act;

1 8. an order requiring defendants to pay costs and fees as permitted by
2 28 U.S.C. §§ 1920 and 2412(a)(2); and

3 9. such other and further remedial ancillary relief as the Court may deem
4 appropriate.
5

6 Date: February 21, 2002

ATTORNEYS FOR PLAINTIFF

7
8 _____
Susan J. Gradman
9
10
11

12 Susan J. Gradman, Illinois ARDC No. 6225060
13 Scott R. Williamson, Illinois ARDC No. 06191293
14 Commodity Futures Trading Commission
15 300 South Riverside Plaza, Suite 1600N
16 Chicago, IL 60606
Telephone (312) 886-3175
Facsimile (312) 353-4502

17 Local Counsel:

18 Edwin J. Yoshimura, State Bar No. 089948
19 Bernard John Barrett, State Bar No. 165869
20 Commodity Futures Trading Commission
21 10900 Wilshire Boulevard, Suite 400
22 Los Angeles, California 90024
Telephone (310) 443-4700
Facsimile (310) 443-4757

23 Attorneys for Plaintiff Commodity Futures Trading Commission
24
25
26
27
28