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19
20 **UNITED STATES DISTRICT COURT**
21 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
22 **SOUTHERN DIVISION**
23

24
25 _____)
26 **U.S. COMMODITY FUTURES**)
27 **TRADING COMMISSION**)
28)
29 **Plaintiff,**)
30)
31 **v.**)
32)
33 **FOREX LIQUIDITY LLC.**)
34)
35 **Defendant**)
36 _____)

CIVIL ACTION NO.
SACV 07-1437 CJC (RNBx)

37
38 **EX PARTE STATUTORY RESTRAINING ORDER, AND ORDER TO**
39 **SHOW CAUSE REGARDING PRELIMINARY INJUNCTION**

1 Plaintiff, the Commodity Futures Trading Commission ("Commission"), has
2 filed a complaint for permanent injunction and other relief, and moved *ex parte*,
3 pursuant to Section 6c of the Commodity Exchange Act (the "Act"), 7 U.S.C.
4 § 13a-1 (2002), for a Statutory Restraining Order. The Court, having considered the
5 Commission's Complaint, Motion, Memorandum of Points and Authorities, Exhibits,
6 other materials, all other evidence presented by the Commission filed herein, and
7 having heard the arguments of Plaintiff's counsel, finds that:

8 1. This Court has jurisdiction over the parties and over the subject matter
9 of this action pursuant to Section 6c of the Commodity Exchange Act, as amended
10 (the "Act") 7 U.S.C. § 13a-1 (2002). Venue lies properly within this District
11 pursuant to Sections 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002).

12 2. There is good cause to believe that Defendant Forex Liquidity LLC
13 ("FXLQ") is engaged, is engaging and is about to engage in acts and practices
14 constituting violations of the Act, 7 U.S.C. §§ 1, *et seq.* (2002).

15 3. There is good cause to believe that immediate and irreparable damage to
16 the Court's ability to grant effective final relief for customers in the form of monetary
17 redress will occur from the sale, transfer, assignment, or other disposition by
18 Defendant of assets or records unless Defendant is immediately restrained and
19 enjoined by Order of this Court.

1 including spot and futures contracts, insurance policies, and all cash, wherever
2 located.

3 **RELIEF GRANTED**

4 **I.**

5 **Order Against Transfer, Dissipation, and Disposal of Assets**

6 **IT IS HEREBY ORDERED** that

7 8. Defendant, its agents, owners, servants, employees, attorneys, and
8 persons in active concert or participation with it who receive notice of this Order in
9 accordance with Section XII of this Order, and except as otherwise ordered by this
10 Court, or, as to receivership assets, as directed by the Receiver appointed herein,
11 are restrained and enjoined from directly or indirectly transferring, selling,
12 alienating, liquidating, encumbering, pledging, leasing, loaning, assigning,
13 concealing, dissipating, converting, withdrawing, or otherwise disposing of any
14 assets, wherever located, including assets held outside the United States. The
15 assets affected by this paragraph shall include both existing assets and assets
16 acquired after the effective date of this Order wherever located, including but not
17 limited to the assets identified below by name of financial institution and partial or
18 complete account number (if known):

- 19 a) Malory Investments LLC; #70028104 PB (FXLQ/MultiBank FX);
20 #70028114I (FXLQ/MultiBank FX)

- 1 b) MF Global FXClear; #MC103300 (Forex Liquidity LLC) or
2 #MX103300;
- 3 c) Solid Gold Financial Services Inc; #381130001 (Forex Liquidity
4 LLC);
- 5 d) South County Bank, #26001404 (Forex Liquidity LLC);
6 #26001404; #26001412;
- 7 e) HotSpot FXR; #forexcollat (Forex Liquidity LLC);
- 8 f) FIMAT International Banque SA (UK); #L FXXXXX 2000F310
9 (Forex Liquidity LLC);
- 10 g) ADM Derivatives Inc.;
- 11 h) Bank of America; #1213442965;
- 12 i) US Bank; account numbers ending in 3831; 3823; 4548; 1755;
13 0757; account numbers #153495034958; #153495034966;
- 14 j) Commonwealth Financial P.M.S.; 0339806851;
- 15 k) OANDA Corporation; (account number unknown);
- 16 l) London Capital Group (account number unknown);
- 17 m) Saxo Bank (account number unknown).

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II.

Directives to Financial Institutions and Others

9. IT IS FURTHER ORDERED, pending further Order of this Court, that the financial or brokerage institutions, business entities, or persons identified above in subparagraphs (a)-(m) of Part I of this Order that hold, control, or maintain custody of the specified accounts or assets of Defendant shall prohibit Defendant, its owners, employees, agents and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any such asset except as directed by further order of the Court.

III.

Maintenance of Business Records

IT IS FURTHER ORDERED that:

10. Defendant and all persons or entities who receive notice of this Order, are restrained and enjoined from directly or indirectly destroying, mutilating, erasing, altering, concealing or disposing of, in any manner, directly or indirectly, any documents or records that relate to the business practices or business finances of Defendant.

1 IV.

2 Inspection and Copying of Books and Records

3 **IT IS FURTHER ORDERED** that:

4 A. Representatives of the Commission and the Receiver appointed herein
5 shall be immediately allowed to inspect the books, records, and other documents of
6 Defendant and its agents including, but not limited to, electronically stored data,
7 tape recordings, and computer discs, wherever they may be situated and whether
8 they are in the possession of Defendant or others, and to copy said documents, data
9 and records, either on or off the premises where they may be situated; and that the
10 U.S. Marshall's Office is authorized and directed to accompany and assist
11 Commission representatives and designated agents of the Commission, including
12 staff members of the National Futures Association, as well as agents and
13 employees of the temporary Receiver appointed herein, to assist said persons in the
14 service and execution of this order and to undertake such efforts as are reasonably
15 necessary to ensure that the terms of this Order are effectuated.

16 B. Defendant and its agents, owners, servants, employees, attorneys, and
17 persons in active concert or participation with them who receive notice of this Order,
18 shall cooperate fully with the Commission and the Receiver to locate and provide to

1 representatives of the Commission and the Receiver all books and records of
2 Defendant, wherever such books and records may be situated.

3 V.

4 **Appointment of a Receiver**

5 **IT IS FURTHER ORDERED** that Robb Evans & Associates LLC, is
6 appointed temporary Receiver for Defendant and any affiliates, subsidiaries, or
7 holding companies of Defendant, with the full powers of an equity receiver. The
8 Court makes this appointment of a temporary Receiver after having duly
9 considered the qualifications and experience of said firm, along with a
10 confirmation from an authorized representative of said firm that it stands ready to
11 assume the duties of Receiver and to carry out the duties of Receiver as specified
12 herein, as evidenced in a firm resume, letter, and list of prior fiduciary
13 engagements submitted in writing to this court by Plaintiff in support of its
14 application for this statutory restraining order, which shall be filed separately by
15 Plaintiff and served upon defendant. The Receiver shall be the agent of this Court
16 in acting as Receiver under this Order.

1 VI.

2 Powers of the Receiver

3 **IT IS FURTHER ORDERED** that the Receiver is directed and authorized
4 to accomplish the following:

- 5 A. Assume full control of the Defendant by removing any officer,
6 independent contractor, employee, or agent of the Defendant, from
7 control and management of the affairs of the Defendant;
- 8 B. Take exclusive custody, control, and possession of all the funds,
9 property, mail and other assets of, in the possession of, or under the
10 control of the Defendant, wherever situated. The Receiver shall have
11 full power to sue for, collect, receive and take possession of all goods,
12 chattels, rights, credits, moneys, effects, land, leases, books, records,
13 work papers, and records of accounts, including computer-maintained
14 information, and other papers and documents of the Defendant,
15 including documents related to customers or clients whose interests
16 are now held by or under the direction, possession, custody or control
17 of the Defendant. The Receiver shall have discretion to determine
18 that certain personal property or other assets of the Defendant shall be
19 under the Receiver's control, but shall remain in the possession or
20 custody of the Defendant;

- 1 C. Take all steps necessary to secure the business premises of the
2 Defendant and any and all other premises under the control of the
3 Defendant;
- 4 D. Preserve, hold and manage all receivership assets, and perform all acts
5 necessary to preserve the value of those assets, in order to prevent any
6 loss, damage or injury to customers or clients;
- 7 E. Prevent the withdrawal or misapplication of funds entrusted to the
8 Defendant, and otherwise protect the interests of customers or clients;
- 9 F. Manage and administer the Defendant by performing all acts
10 incidental thereto that the receiver deems appropriate, including hiring
11 or dismissing any and all personnel or suspending operations;
- 12 G. Collect all money owed to the Defendant;
- 13 H. Initiate, defend, compromise, adjust, intervene in, dispose of, or
14 become a party to any actions or proceedings in state, federal or
15 foreign court necessary to preserve or increase the assets of the
16 Defendant or to carry out its duties pursuant to this Order;
- 17 I. Choose, engage and employ attorneys, accountants, appraisers, and
18 other independent contractors and technical specialists, as the
19 Receiver deems advisable or necessary in the performance of duties
20 and responsibilities under the authority granted by this Order;

1 J. Issue subpoenas to obtain documents and records pertaining to the
2 receivership, and conduct discovery in this action on behalf of the
3 receivership estate;

4 K. Open one or more bank accounts as designated depositories for funds
5 of the Defendant. The Receiver shall deposit all funds of the
6 Defendant in such designated accounts and shall make all payments
7 and disbursements from the receivership estate from such accounts;
8 and

9 L. Make payments and disbursements from the receivership estate that
10 are necessary or advisable for carrying out the directions of, or
11 exercising the authority granted by, this Order. The Receiver shall
12 apply to the Court for prior approval of any payment of any debt or
13 obligation incurred by the Defendant prior to the date of entry of this
14 Order, except for payments that the Receiver deems necessary or
15 advisable to secure assets of the Defendant.

16 **VII.**

17 **IT IS FURTHER ORDERED** that, immediately upon service of this Order
18 upon them, Defendant, and any other person or entity served with a copy of this
19 Order, shall forthwith or within such time as permitted by the Receiver in writing,
20 deliver over to the Receiver:

- 1 A. Possession and custody of all funds, assets, property, and all other
2 assets, owned beneficially or otherwise, wherever situated, of the
3 Defendant;
- 4 B. Possession and custody of documents of the Defendant, including but
5 not limited to, all books and records of accounts, all financial and
6 accounting records, balance sheets, income statements, bank records
7 (including monthly statements, canceled checks, records of wire
8 transfers, and check registers), client lists, title documents and other
9 papers;
- 10 C. Possession and custody of all funds and other assets belonging to
11 members of the public now held by the Defendant;
- 12 D. All keys, computer passwords, entry codes, and combinations to locks
13 necessary to gain or to secure access to any of the assets or documents
14 of the Defendant, including but not limited to, access to the
15 Defendant's business premises, means of communication, accounts,
16 computer systems, or other property; and
- 17 E. Information identifying the accounts, employees, properties or other
18 assets or obligations of the Defendant.

1 **VIII.**

2 **IT IS FURTHER ORDERED** that the Defendant shall cooperate fully with
3 and assist the Receiver. The Defendant's cooperation and assistance shall include,
4 but not be limited to, providing any information to the Receiver that the Receiver
5 deems necessary to exercising the authority and discharging the responsibilities of
6 the Receiver under this Order, and advising all persons who owe money to the
7 Defendant that all debts should be paid directly to the Receiver.

8 **IX.**

9 **IT IS FURTHER ORDERED** that except by leave of the Court, during the
10 pendency of the receivership ordered herein, the Defendant and all other persons
11 and entities be and hereby are stayed from taking any action to establish or enforce
12 any claim, right or interest for, against, on behalf of, in, or in the name of, the
13 Defendant, the Receiver, receivership assets, or the Receiver's duly authorized
14 agents acting in their capacities as such, including but not limited to, the following
15 actions:

- 16 A. Commencing, prosecuting, litigating or enforcing any suit, except that
17 actions may be filed to toll any applicable statute of limitations;
- 18 B. Accelerating the due date of any obligation or claimed obligation,
19 enforcing any lien upon, or taking or attempting to take possession of,
20 or retaining possession of, assets or property of the Defendant or any

1 assets or property claimed by the Defendant, or attempting to
2 foreclose, forfeit, alter or terminate any of the Defendant's interests in
3 assets or property, whether such acts are part of a judicial proceeding
4 or otherwise;

5 C. Using self-help or executing or issuing, or causing the execution or
6 issuance of any court attachment, subpoena, replevin, execution or
7 other process for the purpose of impounding or taking possession of
8 or interfering with, or creating or enforcing a lien upon any assets or
9 property, wherever located, owned by or in the possession of the
10 Defendant, or the Receiver, or any agent of the Receiver; and

11 D. Doing any act or thing to interfere with the Receiver taking control,
12 possession or management of the assets or property subject to the
13 receivership, or to in any way interfere with the Receiver or the duties
14 of the Receiver; or to interfere with the exclusive jurisdiction of this
15 Court over the property and assets of the Defendant.

16 This Paragraph does not stay the commencement or continuation of an
17 action or proceeding by a governmental unit to enforce such
18 governmental unit's police or regulatory power.

1 IX.

2 **IT IS FURTHER ORDERED** that the Receiver and all personnel hired by
3 the Receiver as herein authorized, including counsel to the Receiver, are entitled to
4 reasonable compensation for the performance of duties pursuant to this Order and
5 for the cost of actual out-of-pocket expenses incurred by them, from the assets now
6 held by, or in the possession or control of, or which may be received by the
7 Defendant. The Receiver shall file with the Court and serve on the parties periodic
8 requests for the payment of such reasonable compensation, with the first such
9 request filed no more than sixty (60) days after the date of this Order. The
10 Receiver shall not increase the hourly rates used as the bases for such fee
11 applications without prior approval of the Court. The CFTC shall have the right to
12 object to any fee application made by the Receiver.

13 X.

14 **Bond Not Required of Plaintiff**

15 **IT IS FURTHER ORDERED** that:

16 Plaintiff Commission is an agency of the United States of America and,
17 accordingly, the Commission need post no bond.

1 **XI.**

2 **Order To Show Cause**

3 **IT IS FURTHER ORDERED** that:

4 A. Defendant shall appear before this Court on the 4th day of January,
5 2008, at 1:30 P.M., ^{etc} ~~before this Court~~ at the United States Courthouse for the
6 Central District of California, Southern Division, Courtroom 9B, to show cause, if
7 there be any, why an Order for Preliminary Injunction should not be granted to
8 prohibit further violations of the Act and why the other relief requested should not be
9 granted pending trial on the merits of this action; unless the parties mutually agree to
10 extend or postpone such date.

11 B. Should any party wish to file a memorandum of law or other papers in
12 opposition to Plaintiff's Motion for a Preliminary Injunction, Defendant shall file and
13 serve upon counsel for Plaintiff any opposition no later than December 28, 2007, and
14 any reply by Plaintiff thereto shall be filed and served upon Defendant no later than
15 January 3, 2008.

16 **XII.**

17 **Service of Order**

18 **IT IS FURTHER ORDERED** that copies of this Order, as well as the Complaint
19 and all accompanying papers filed by Plaintiff in support of its application for this
20 order and the motion for preliminary injunction shall be personally served upon

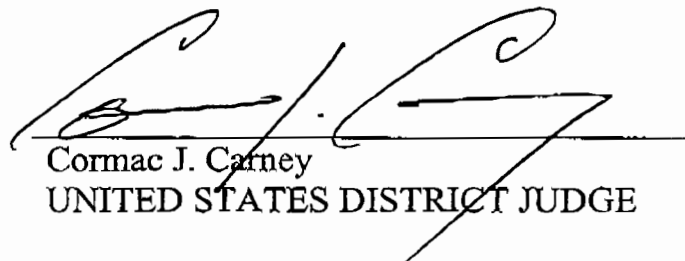
1 Defendant no later than close of business on Monday, December 17, 2007. The
2 seal entered in this case shall be lifted on December 18, 2007. Copies of this Order
3 may be served by any means, including facsimile transmission, upon any financial
4 institution or other entity or person that may have possession, custody, or control
5 of any documents or assets of any Defendant, or that may be subject to any
6 provision of this Order. Service of the summons, Complaint or other process may
7 be affected by any U.S. Marshal or deputy U.S. Marshal.

8 X.

9 **Force and Effect**

10 **IT IS FURTHER ORDERED** that this Order shall remain in full force and
11 effect until further order of this Court, and that this Court retains jurisdiction of this
12 matter for all purposes.

13
14 **SO ORDERED**, at _____ on this 14th day of December
15 2007.

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Cormac J. Carney
UNITED STATES DISTRICT JUDGE

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