



UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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) CFTC Docket No. 13-34 _____
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 In the Matter of:)
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 FXDirectDealer, LLC,)
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 Respondent.)
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ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 6(c) and 6(d) OF THE COMMODITY EXCHANGE ACT, AS AMENDED, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that FXDirectDealer, LLC (“FXDD”), a registered retail foreign exchange dealer (“RFED”) and futures commission merchant (“FCM”), has violated Commission Regulation (“Regulation”) 166.3, 17 C.F.R. §166.3 (2013). The Commission, therefore, deems it appropriate and in the public interest that a public administrative proceeding be, and hereby is, instituted to determine whether FXDD engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, FXDD has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings and conclusions herein, FXDD consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and 6(d) of the Commodity Exchange Act, as Amended, Making Findings and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.¹

¹ FXDD consents to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that FXDD does not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than a proceeding in bankruptcy or to enforce the terms of this

III.

The Commission finds the following:

A. Summary

From at least December 10, 2009 through June 2011 (“relevant period”), FXDD failed to supervise diligently its officers’, employees’, and agents’ handling of customer accounts that engaged in off-exchange foreign currency transactions (“forex”) with FXDD on FXDD’s Metatrader 4.0 (“MT4”) electronic trading platform, in violation of Regulation 166.3, 17 C.F.R. § 166.3 (2013). As a result, FXDD failed to prevent its officers, employees, and agents from establishing and maintaining asymmetrical slippage parameters on the MT4 platform.² These asymmetrical slippage parameters allowed FXDD to reject any trade order when the price slipped by more than 2 pips in the customer’s favor between the time the customer placed the order and the time FXDD was to execute that order. But these parameters also allowed FXDD to fill orders when the price slipped by more than two pips in FXDD’s favor between order placement and order execution. FXDD gained, to the detriment of 24,904 FXDD customer accounts, more than \$1.8 million from slippage on trades where the prices slipped in favor of FXDD and against its customers by more than 2 pips.

B. Respondent

FXDirectDealer, LLC is and was, at all times relevant hereto, a limited liability company that acted as a counterparty to customer accounts trading in forex and provided its customers electronic trading platforms through which its customers entered into forex trades with FXDD. FXDD is headquartered in New York, New York. FXDD has been an FCM since December 10, 2009 and an RFED since September 2, 2010.

C. Facts

During the relevant period, FXDD failed to supervise diligently its officers’, employees’, and agents’ handling of customer accounts that traded on FXDD’s MT4 platform by allowing these officers, employees, and agents to establish and maintain asymmetrical slippage parameters on the MT4 system, to the detriment of FXDD’s customers.

1. **FXDD Established Slippage Parameters on the MT4 Platform to Facilitate Filling Customer Orders**

As an RFED, FXDD solicits customers to open trading accounts and trade forex against FXDD as the counterparty. To facilitate its customers’ trading, FXDD makes available several

Order. Nor does FXDD consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

² In its Offer, FXDD represented that it instituted symmetrical slippage settings beginning in July 2011.

electronic trading platforms through which customers can enter into forex transactions with FXDD. During the relevant period, approximately 99 percent of FXDD's customers used the MT4 platform.

Through the MT4 platform, FXDD streams to each of its customers electronic bid and offer quotes for particular currency pairs, which are displayed on the customer's computer screen. The customer can then place an "instant-execution" (also known as "limit-fill-or-kill") order with FXDD at a particular bid or offer. In an instant-execution order, the customer places the order at the specific price displayed on the screen, and FXDD either fills the customer's order at that price or rejects the order. Because of latency (*i.e.*, the time it takes for the customer's electronically-submitted order to reach FXDD's order-processing system) and because FXDD's streaming price quotes to its customers often change very quickly, the price offered by FXDD to its customers for a particular currency pair can often change, or "slip," between the time the customer clicks on a price and the time FXDD receives, processes, and fills the customer's order.

FXDD typically seeks to trade with a customer at the price at which the customer places an order. In order to accommodate this policy in the face of slippage and often fast-moving forex prices, FXDD's officers, employees, and agents established slippage parameters on the MT4 platform. These slippage parameters determine whether (1) FXDD fills a customer order at the order-placement price when the price slips between order placement and FXDD's execution of that order; or (2) whether FXDD rejects a customer order.

2. During the Relevant Period, FXDD's Officers, Employees, and Agents Established and Maintained Asymmetrical Slippage Parameters on the MT4 Platform That Favored FXDD

During the relevant period, FXDD's officers, employees, and agents established and maintained slippage parameters on the MT4 platform that were asymmetrical. If the price slipped more than 2 pips in the customer's favor between order placement and order execution, FXDD rejected the customer's order. In that case, the customer would have to resubmit his or her order at the new, less favorable price. But if the price slipped in FXDD's favor between order placement and order execution, FXDD *always* filled the customer's order at the order-placement price, regardless of the number of pips by which the price moved against the customer. For example, if the customer tried to place a "buy" order at \$1.50, but the price slipped to \$1.53, FXDD would reject the order and requote the customer the higher "buy" price. But if the price slipped by the same amount or more in FXDD's favor, such as to \$1.47, \$1.45, or \$1.40, FXDD filled the order at \$1.50 (*i.e.*, FXDD would not requote the customer the lower "buy" price). In other words, FXDD filled a customer's order when FXDD stood to immediately obtain an unrealized profit from the trade, but rejected a customer's order when the customer would have immediately obtained an unrealized profit of more than 2 pips at FXDD's expense.

Accordingly, during the relevant period, FXDD's officers, employees, and agents responsible for establishing, maintaining, and monitoring its electronic trading platforms (specifically, the slippage parameters on the MT4 platform) failed to establish a system that prevented asymmetrical slippage on orders executed through the MT4 platform. In addition, FXDD failed to supervise diligently these officers', employees', and agents' handling of the MT4 platform, insofar as it failed to correct the unequal treatment of price slippage that resulted

from the asymmetrical slippage parameters established on that platform. By failing to establish a proper supervisory system and failing to diligently supervise the MT4 platform, FXDD was unable to ensure the integrity of trades on the MT4 platform with regard to slippage—thereby allowing FXDD, during the relevant period, to profit by \$1,828,261, at the expense of 24,904 FXDD customer accounts, by taking slippage to which FXDD was not entitled because of its asymmetrical slippage parameters.

D. Legal Discussion

Regulation 166.3, 17 C.F.R. § 166.3 (2013), requires,

Each Commission registrant, except an associated person who has no supervisory duties, must diligently supervise the handling by its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) relating to its business as a Commission registrant.

A violation under Regulation 166.3 is an independent violation for which no underlying violation is necessary. *See In re FCStone LLC*, No. 13-24, at 8 (CFTC May 29, 2013); *In re Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,194 at 45,744 (CFTC Dec. 10, 1997).

A violation of Regulation 166.3 is demonstrated by showing either that: (1) the registrant's supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *In re Rosenthal Collins Group, LLC*, [2012 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶32,166 at 69,269 (CFTC Apr. 12, 2012); *In re Murlas Commodities*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,485 at 43,161 (CFTC Sept. 1, 1995); *In re GNP Commodities, Inc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,219 (CFTC Aug. 11, 1992) (providing that, even if an adequate supervisory system is in place, Regulation 166.3 can still be violated if the supervisory system is not diligently administered); *In re Paragon Futures Assoc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC Apr. 1, 1992) (“The focus of any proceeding to determine whether Rule 166.3 has been violated will be on whether [a] review [has] occurred and, if it did, whether it was diligent.”). Evidence of violations that “should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly” is probative of a failure to supervise. *Id.*

During the relevant period, with respect to customer orders placed on and executed through the MT4 platform, FXDD both employed an inadequate supervisory system and failed to perform its supervisory duties diligently, in violation of Regulation 166.3. *See In re Forex Capital Markets, LLC*, No. 12-01, at 5 (CFTC Oct. 3, 2011) (finding that forex firm violated Regulation 166.3 by failing to supervise its officers', employees', and agents' handling of slippage with respect to customer accounts traded on the firm's platforms). First, FXDD did not have in place an adequate supervisory system sufficient to prevent asymmetrical slippage on trades executed through the MT4 platform. FXDD was required to ensure the integrity of all

trades on the MT4 platform; instead, FXDD allowed its officers, agents, and employees to establish and maintain asymmetrical slippage parameters on this platform. *Id.* Second, FXDD failed to detect the unequal treatment of price slippage that resulted from the asymmetrical slippage parameters established and maintained on the MT4 platform. FXDD should have monitored its officers, employees, and agents responsible for the MT4 platform more closely to ensure that the slippage parameters on the MT4 platform were symmetrical and treated equally price slippage in favor of customers and price slippage in favor of FXDD. Had FXDD diligently supervised its officers', employees', and agents' handling of the MT4 platform, FXDD would have discovered and had the opportunity to correct the problem of asymmetrical slippage before 24,904 of its customers suffered harm. *Id.*

IV.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that FXDD violated Regulation 166.3, 17 C.F.R. § 166.3 (2013).

V.

OFFER OF SETTLEMENT

FXDD has submitted the Offer in which it, without admitting or denying the findings herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 1. the filing and service of a complaint and notice of hearing;
 2. a hearing;
 3. all post-hearing procedures;
 4. judicial review by any court;
 5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 6. any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's

Regulations, 17 C.F.R. §§ 148.1-30 (2013), relating to, or arising from, this proceeding;

7. any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and
 8. any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which FXDD has consented in the Offer; and
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. makes findings by the Commission that FXDD violated Regulation 166.3, 17 C.F.R. §166.3 (2013);
 2. orders FXDD to cease and desist from violating Regulation 166.3, 17 C.F.R. §166.3 (2013);
 3. orders FXDD to pay restitution in the amount of \$1,828,261, plus post-judgment interest;
 4. orders FXDD to pay to the Commission a civil monetary penalty in the amount of \$914,131 (recognizing that FXDD also will pay a penalty of \$914,131 to the National Futures Association ("NFA") for the conduct described above); and
 5. orders FXDD and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI. of this Order.

Upon consideration, the Commission has determined to accept FXDD's Offer.

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. FXDD shall cease and desist from violating Regulation 166.3, 17 C.F.R. §166.3 (2013);
- B. FXDD shall pay restitution in the amount of \$1,828,261 within fifteen (15) days of the entry of this Order (the "Restitution Obligation"). FXDD shall pay or otherwise credit its Restitution Obligation directly to the customers and former customers harmed by FXDD's violation of Regulation 166.3, 17 C.F.R. § 166.3 (2013).

All customers and former customers shall be afforded at least one alternative that allows them to receive or withdraw these funds without any fees or restrictions.

For its customers due \$1.00 or more under this Order,³ with open accounts at FXDD or its affiliates (“FXDD Accounts”), FXDD shall confirm to NFA, no later than thirty (30) days after the entry of this Order, that FXDD has credited to these customers’ accounts the amount of positive slippage that FXDD failed to pass on to each customer or former customer for their trades during the relevant period.

For its customers or former customers due \$1.00 or more under this Order, without open FXDD Accounts, FXDD shall: (a) confirm to NFA, no later than thirty (30) days after the entry of this Order, that FXDD has credited to their closed, archived, or inactive accounts the amount of positive slippage that FXDD failed to pass on to each customer or former customer for their trades during the relevant period; (b) have immediately “locked” those accounts (*i.e.*, prevent those accounts from any trading until and unless those accounts are re-opened as set forth in “(c)” below); provided, however, any such customer or former customer may withdraw such funds as may be due that customer while the customer’s account is “locked”; and (c) if the customer or former customer chooses to re-open an account at FXDD, re-open the account in conformity with all applicable Commission and NFA rules and regulations.

- C. If eighteen months after the entry of this Order, any closed, archived, or inactive accounts contain any remaining funds and have never been re-opened in accordance with “(c)” above—despite FXDD’s best efforts to credit the customers or former customers as required by this Order and to inform these customers or former customers of their options as set forth above—FXDD shall immediately remit the portion of its Restitution Obligation to a segregated, interest-bearing (at a fair market rate) account. Upon expiration of that eighteen months, the funds shall, pursuant to this Order, no longer be considered restitution due and payable to the customers and former customers of FXDD with closed, archived, or inactive accounts, and FXDD shall remit the balance of the segregated, interest-bearing account to the Commission, which will designate such payment to the “Commodity Futures Trading Commission Customer Protection Fund” or, if that is fully funded, to the U.S. Treasury. Either way, FXDD shall make such payment by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables --- AMZ 340

³ Although this Order does not require FXDD to credit the accounts of customers due less than \$1.00, FXDD shall remit to the Commission any portion of the Restitution Obligation owed to customers due less than \$1.00. The Commission will designate such payment to the “Commodity Futures Trading Commission Customer Protection Fund” or, if that is fully funded, to the U.S. Treasury, in accordance with the procedures set forth in paragraph C below.

E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment is to be made by electronic funds transfer, FXDD shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. FXDD shall accompany payment of the CMP Obligation with a cover letter that identifies the name and docket number of this proceeding. FXDD shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- D. FXDD shall pay to the Commission a civil monetary penalty in the amount of \$914,131 within fifteen (15) days of the date of entry of this Order (the "CMP Obligation"). The Commission recognizes that FXDD also will pay a penalty of \$914,131 to the NFA in connection with the conduct described above in resolving NFA Case No. 12-BCC-021. Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2006). FXDD shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables --- AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment is to be made by electronic funds transfer, FXDD shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. FXDD shall accompany payment of the CMP Obligation with a cover letter that identifies the name and docket number of this proceeding. FXDD shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

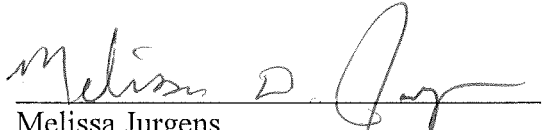
- E. FXDD, along with its successors and assigns, shall comply with the following conditions and undertakings set forth in the Offer:

1. Public Statements: FXDD agrees that neither it nor any of its agents or employees under its authority or control, nor any of its successors or assigns shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect FXDD's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. FXDD, as well as its successors and assigns, shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.
 2. Cooperation with the NFA: The NFA has agreed to review FXDD's compliance with Part VI.B. of this Order. FXDD shall fully cooperate with the NFA in connection with the NFA's review. Further, FXDD will provide to the NFA any such information the NFA deems necessary and appropriate for its review.
 3. Cooperation with the Commission: FXDD shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto. As part of such cooperation, FXDD agrees to:
 - a. comply fully, promptly, completely, and truthfully, subject to any legally recognized privilege, with any inquiries or requests for information or documents;
 - b. provide authentication of documents and other evidentiary material; and
 - c. use its best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of FXDD, regardless of the individual's location and at such location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including, but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such proceeding, trial, or investigation.
- F. Partial Satisfaction: FXDD understands and agrees that any acceptance by the Commission or the NFA of partial payment of FXDD's Restitution Obligation or CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order or a waiver of the Commission's right to seek to compel payment of any remaining balance.
- G. Change of Address/Phone: Until such time as FXDD satisfies in full its Restitution Obligation and CMP Obligation as set forth in this Order, FXDD shall provide written

notice to the Commission by certified mail of any change to its telephone number and mailing address within ten (10) calendar days of the change.

The provisions of this Order shall be effective as of this date.

By the Commission.


Melissa Jurgens
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 18, 2013