

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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1:16 pm, Sep 14, 2018

In the Matter of:

**FOREX ENTOURAGE, LLC, PAUL
ANTHONY ROMERO and
ZACHARY DUFFY,**

Respondents.

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) **CFTC Docket No. 18-21**
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**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that on multiple occasions between September 2015 and September 2017 (the “Relevant Period”), Forex Entourage, LLC (“FXE”) violated Sections 2(c)(2)(C)(iii)(I)(bb) and 4m(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(bb), 6m(1) (2012), and Commission Regulation (“Regulation”) 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2017), and Paul Anthony Romero (“Romero”) and Zachary Duffy (“Duffy”) violated Sections 2(c)(2)(C)(iii)(I)(aa) and 4k(3) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(aa), 6k(3) (2012), and Regulation 5.3(a)(3)(ii), 17 C.F.R. § 5.3(a)(3)(ii) (2017). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether FXE, Romero, and Duffy (together, “Respondents”) engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II. FINDINGS

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

¹ Respondents consent to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agree that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondents do not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondents

The Commission finds the following:

A. Summary

Beginning January 2017 until September 2017 (the “Relevant Period”), FXE acted as a commodity trading advisor (“CTA”) without being registered with the Commission as such, by exercising discretionary trading authority, or obtaining a written power of attorney to exercise discretionary trading authority, over the foreign currency (“forex”) trading accounts of U.S. customers who were not eligible contract participants (“ECP”). Throughout the Relevant Period, Romero and Duffy acted as associated persons (“AP”) of a CTA without being registered by acting as officers, employees or agents of FXE in a capacity that involved soliciting customers’ discretionary accounts or supervising other persons so engaged.

B. Respondents

Forex Entourage, LLC is a company organized and operated pursuant to the laws of the State of Utah. It uses as a business address 1224 S. River Road, Suite 104, St. George, Utah 84790. FXE has never been registered with the Commission in any capacity.

Paul Anthony Romero is an individual residing in St. George, Utah. Romero is the founder, one-third owner, President and agent of FXE. Romero has never been registered with the Commission in any capacity.

Zachary Duffy is an individual who resides in Hurricane, Utah. Duffy is an individual who resides in St. George, Utah. Duffy is a one-third owner of FXE, and its Chief Technology Officer and agent. Duffy has never been registered with the Commission in any capacity.

C. Facts

Throughout the Relevant Period, FXE offered to trade customers’ retail forex accounts through FXE’s “InstaTrader Pro autotrader program,” which FXE claimed was “100% hands free trading” of leveraged and/or margined forex transactions. FXE instructed non-ECP retail customers to open a retail forex account at unregistered retail foreign exchange dealers (“RFED”) Tallinex, Ltd (“Tallinex”)² and/or JAFX, Ltd (“JAFX”), fund the account, and then link their account via a virtual private network (“VPN”) Internet connection to FXE’s “master account” at first Tallinex, and later JAFX. Thereafter, FXE would trade the non-ECP customer’s retail forex account by duplicating in the non-ECP customer’s account every trade that was placed in FXE’s “master account” by use of a so-called “expert advisor” or “EA” autotrader software program.

In early 2017, FXE replaced the “InstaTrader Pro autotrader program” with another trading system FXE alternately named the “Forex Automated Trading Machine” and/or the

do not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

² Tallinex is a defendant in a pending Commission injunctive action, *CFTC v. Tallinex, Ltd.*, No. 2:17-cv-00483 (D. Utah 2017).

“Forex ATM autotrader program.” Customers were directed to open accounts in their name at JAFX, and were sent directions on how to link their account via a VPN Internet connection to FXE’s “master account” at JAFX. FXE used this new program to continue trading non-ECP customers’ accounts; however, instead of trading non-ECP customers’ accounts multiple times per day, the new “Forex ATM autotrader program” traded non-ECP customers’ account once per day.

Throughout the Relevant Period, FXE exercised discretionary trading authority and/or obtained written discretionary trading authority over retail customers’ forex accounts at unregistered RFEDs, carried in the name of non-ECP U.S. customers that FXE used to engage in leveraged and/or margined retail forex transactions on behalf of said customers.

FXE solicited actual and prospective customers to have their retail forex accounts traded by FXE through three websites operated by FXE: *www.forexentourage.net*, *www.fxelive.com*, and *www.fxeatm.com*. The content of the websites was controlled by Duffy and Romero. FXE also extensively solicited actual and prospective customers through emails, in-person solicitations, and the use of video and written solicitations on social media networks such as [YouTube](#), Facebook, Instagram, and Snapchat.

In testimony under oath before the Commission, Romero testified that that he and Duffy were jointly responsible for the content of FXE’s websites and videos that solicited customers’ discretionary retail forex trading accounts. Romero further testified that he was also responsible for supervising FXE’s employees and other agent who solicited customers’ discretionary retail forex trading accounts. In testimony under oath before the Commission, Duffy testified that he also reviewed and approved the video solicitations for customers to have FXE obtained discretionary trading authority over customers’ retail forex trading accounts using the “Forex ATM autotrader program.”

At no time during the Relevant Period was FXE eligible for an exemption from the requirement to register as a CTA.

III. LEGAL DISCUSSION

Section 1a(12)(A)(i) of the Act, 7 U.S.C. § 1a(12)(A)(i) (2012), defines a CTA as any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or advisability of trading in, among other things, forex. Pursuant to Section 1a(38) of the Act, the term “person” imports the plural or singular, and includes individuals, associates, partnerships, corporations, and trusts. Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), requires a person who is acting as a CTA and makes use of the mails or any means or instrumentality of interstate commerce in connection with the person’s business as such CTA to register with the Commission unless an exemption from registration applies. FXE was not exempt from registration as a CTA under any provision of the Act or Commission Regulations.

Commission Regulation 5.1(e)(1), 17 C.F.R. § 5.1(e)(1) (2017), defines a commodity trading advisor, for the purposes of Part 5 of the Regulations, as “any person who exercises discretionary trading authority or obtains written authorization to exercise discretionary trading

authority over any account for or on behalf of any person that is not an eligible contract participant as defined in section 1a(18) of the Act, in connection with retail forex transactions.”

During the Relevant Period, FXE acted as a CTA by making use of the mails or any means of interstate commerce by engaging, for compensation or profit, in the business of advising clients as to the value or advisability of trading in off-exchange forex transactions. By failing to register as a CTA, FXE violated Section 4m(1) of the Act.

During the Relevant Period, FXE exercised discretionary trading authority, or obtained or solicited written authorization to exercise discretionary trading authority over accounts of customers. FXE’s solicitation did not limit or restrict customers to be eligible contract participants, as defined in Section 1a(18)(A)(xi) of the Act. As such, FXE was required to register as a CTA pursuant to Section 2(c)(2)(C)(iii)(I)(bb) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb) (2012), and Regulation 5.3(a)(3), 17 C.F.R. § 5.3(a)(3) (2017).

Pursuant to Regulation 5.3(a)(3)(ii), any natural person associated with a CTA as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions) in any capacity which involves (i) the solicitation of a client’s or prospective client’s discretionary account or (ii) the supervision of any person or person so engaged, must register with the Commission as an AP of a CTA.

Pursuant to Section 4k(3) of the Act, 7 U.S.C. § 6k(3) (2012), it shall be unlawful for any person to be associated with a CTA as a partner, officer, employee, consultant or agent (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of a client’s or prospective client’s discretionary account or (ii) the supervision of any person or person so engaged, unless such person is registered with the Commission as an AP of such CTA.

During the Relevant Period, Romero and Duffy were associated with FXE as partners, officer, employee, consultants or agents in capacities which involved (i) the solicitation of a client’s or prospective client’s discretionary account or (ii) the supervision of any person or person so engaged. As such Romero and Duffy were each required to register with the Commission as an AP of a CTA. By failing to register with the Commission as an AP of a CTA, Romero and Duffy each violated Sections 2(c)(2)(C)(iii)(I)(aa) and 4k(3) of the Act and Regulation 5.3(a)(3)(ii).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Forex Entourage, LLC violated Sections 2(c)(2)(C)(iii)(I)(bb) and 4m(1) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(bb), 6m(1) (2012), and Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2017), and Paul Anthony Romero and Zachary Duffy violated Sections 2(c)(2)(C)(iii)(I)(aa) and 4k(3) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(aa), 6k(3) (2012), and Regulation 5.3(a)(3)(ii).

V. OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they, without admitting or denying the findings and conclusions herein:

- A. Acknowledge receipt of service of this Order;
- B. Admit 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. Waive:
 - 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 they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012), and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2017), relating to, or arising from, this proceeding;
 - 7. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201-53, 110 Stat. 847, 857-74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), 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, including this Order;
- D. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer;
- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
 - 1. Makes findings by the Commission that Respondent FXE violated Sections 2(c)(2)(C)(iii)(I)(bb) and 4m(1) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(bb), 6m(1) (2012), and Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2017);

2. Makes findings that Respondents Romero and Duffy each violated Sections 2(c)(2)(C)(iii)(I)(aa) and 4k(3) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(aa), 6k(3) (2012), and Regulation 5.3(a)(3)(ii), 17 C.F.R. § 5.3(a)(3)(ii) (2017);
3. Orders Respondent FXE to cease and desist from violating Sections 2(c)(2)(C)(iii)(I)(bb) and 4m(1) of the Act, and Regulation 5.3(a)(3)(i);
4. Orders Respondents Romero and Duffy to cease and desist from violating Sections 2(c)(2)(C)(iii)(I)(aa) and 4k(3) of the Act, and Regulation 5.3(a)(3)(ii);
5. Orders Respondents to pay, jointly and severally, a civil monetary penalty in the amount of one hundred and fifty thousand dollars (\$150,000.00) (“CMP Obligation”), plus post-judgment interest;
6. Orders Respondents and their 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 the Offer.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent FXE shall cease and desist from violating Sections 2(c)(2)(C)(iii)(I)(bb) and 4m(1) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(bb), 6m(1) (2012), and Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2017);
- B. Respondents Romero and Duffy shall cease and desist from violating Sections 2(c)(2)(C)(iii)(I)(aa) and 4k(3) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(aa), 6k(3) (2012), and Regulation 5.3(a)(3)(ii), 17 C.F.R. § 5.3(a)(3)(ii) (2017);
- C. Respondents shall pay, jointly and severally, a civil monetary penalty in the amount of one hundred fifty thousand dollars (\$150,000) (“CMP Obligation”) within ten (10) days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then 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 (2012).

Respondents shall pay the CMP Obligation and any post-judgment interest 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:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement

6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-6569 office / (405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondents shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent 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, N.W., Washington, DC 20581.

- D. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondents agree that neither they nor any of their successors and assigns, agents or employees under their authority or control 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 Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.
 2. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission of any partial payment of Respondents' CMP Obligation shall not be deemed a waiver of their 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.
 3. Change of Address/Phone: Until such time as Respondents satisfy in full their CMP Obligation as set forth in this Order, Respondents shall provide written notice to the Commission by certified mail of any change to their 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.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 14, 2018