



MANAGED FUNDS  
ASSOCIATION

19 January 2012

VIA ELECTRONIC MAIL

Honorable Gary Gensler  
Chairman  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

Honorable Mary L. Schapiro  
Chairman  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: **Definition of “Eligible Contract Participant” (CFTC: RIN 3235-AK65; SEC: File No. S7-39-10)**

Dear Chairmen Gensler and Schapiro,

On behalf of the GFMA’s Global Foreign Exchange Division (“GFXD”)<sup>1</sup> and Managed Funds Association (“MFA”)<sup>2</sup>, we are pleased to submit for your consideration and adoption a proposed safe harbor (the “Proposed Safe Harbor”) to the CFTC’s proposed rule §1.3 (m) (the “Proposed CFTC ECP Rule”) interpreting the definition of “eligible contract participant” (“ECP”) contained in Section 1a(18)(iv)(II) of the Commodity Exchange Act (the “CEA”). We urge the Commodity Futures Trading Commission (the “CFTC”) and the Securities and Exchange Commission (the “SEC”), and together with the CFTC, the “Commissions”) to adopt the Proposed Safe Harbor as a new final paragraph of the Proposed CFTC ECP Rule. The new paragraph would be added after paragraph 6 and would read as follows:

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<sup>1</sup> The Global Financial Markets Association (“GFMA”) joins together some of the world’s largest financial trade associations to develop strategies for global policy issues in the financial markets, and promote coordinated advocacy efforts. The member trade associations count the world’s largest financial markets participants as their members. GFMA currently has three members: the Association for Financial Markets in Europe (“AFME”), the Asia Securities Industry & Financial Markets Association (“ASIFMA”), and, in North America, the Securities Industry and Financial Markets Association (“SIFMA”). The GFXD of GFMA was formed in co-operation with AFME, ASIFMA and SIFMA. Its members comprise 22 global FX market participants, collectively representing more than 90% of the FX market. See Euromoney FX Survey 2011: Overall Market Share.

<sup>2</sup> MFA is the voice of the global alternative investment industry. Its members are professionals in hedge funds, funds of funds and managed futures funds, as well as industry service providers. Established in 1991, MFA is the primary source of information for policy makers and the media and the leading advocate for sound business practices and industry growth. MFA members include the vast majority of the largest hedge fund groups in the world who manage a substantial portion of the approximately \$2 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York.

“*Safe Harbor*. Notwithstanding any other language in this §1.3 or in the CEA, a commodity pool shall be an eligible contract participant if the commodity pool:

- (1) has total assets exceeding \$10,000,000; **and**
- (2) is not formed for the purpose of evading regulation under Sections 2(c)(2)(B) and 2(c)(2)(C) of the CEA.”

#### A. The Need for a Safe Harbor

As a matter of public policy, we believe that it is essential for the Commissions to establish a safe harbor to the Proposed CFTC ECP Rule. In the absence of a safe harbor, a significant number of investment funds – many of which have in excess of \$1 billion in assets under management and are managed by some of the most sophisticated investment managers in the market – will not qualify as ECPs and, as a result, there is a real risk that they will have to exit the U.S. institutional foreign exchange markets.

Based on a recent study by the Bank for International Settlements, non-bank financial institutions represent approximately 47% of the total trading conducted in the foreign exchange market.<sup>3</sup> Turnover by this category of market participants grew by 42%, rising to \$1.9 trillion in April 2010 from \$1.3 trillion in April 2007. Restricting the ability of investment funds to transact with certain, limited regulated entities will have a material adverse impact on market liquidity and therefore prices. As a result, trading costs are almost certain to go up and liquidity to go down for other participants, such as manufacturing companies, multi-national corporations, banks and governmental entities, including central banks. Moreover, treating investment funds as retail foreign exchange customers will increase systemic risk by reducing opportunities for close-out netting since for legal and operational reasons, in many cases, dealers may not be able to offer retail foreign exchange from the same legal entity that they use to offer institutional derivatives products.<sup>4</sup>

There is also the issue of loss of anonymity related to participation in the retail foreign exchange market. Retail foreign exchange dealers are required to obtain identifying information regarding customers and their trading history. Currently, a trading advisor for a large investment fund will use algorithms to slice trades into small orders and slowly introduce those trades into the market anonymously through use of a number of executors to ensure that their trading strategy is

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<sup>3</sup> See Bank for International Settlements, Triennial Central Bank Survey, *Report on Global Foreign Exchange Market Activity in 2010* (Dec. 2010). The non-bank financial institutions category includes non-reporting banks, hedge funds, pension funds, mutual funds, insurance companies and central banks.

<sup>4</sup> The structure, systems and supporting operations of foreign exchange platforms differ depending on the client base for which they are structured.

not revealed. Forcing these trades into the retail foreign exchange market will eliminate this anonymity and limit the number of available executors.

Finally, a number of commodity trading advisors and commodity pool operators are also registered with the SEC as investment advisers and act on behalf of registered investment companies and/or ERISA plan asset funds. These funds would be ECPs pursuant to Section 1a(18)(A)(iii) or (vi) of the CEA. To the extent these investment funds are not ECPs, they will not be able to trade in blocks with ECP funds, which would hamper best execution. In addition, as a non-ECP, these investment funds would need to post margin as required by the retail foreign exchange rules for products such as FX forwards and FX swaps.<sup>5</sup> Lastly, by introducing the look-through requirement to these investment funds, the market will be forced to apply new qualifying standards to investors that are much higher than the “qualified purchaser” standard set under the Investment Company Act of 1940, as amended.

Given the importance of our foreign exchange markets, there is a critical need to craft the rules applicable to these markets appropriately to provide for continued liquidity and stability. As a result of the regulation of swaps introduced by the Dodd-Frank Act, even the institutional foreign exchange market will become regulated. We urge the Commissions to act thoughtfully and tailor the Proposed CFTC ECP Rule, so that the final adopted ECP definition addresses the legitimate need to eliminate fraud in the retail foreign exchange markets and attempts at end-running regulation while also ensuring that a significant source of liquidity in the institutional foreign exchange market is not damaged. We believe that the Proposed Safe Harbor would strike this balance and accomplish these goals. We urge the Commissions to adopt the Proposed Safe Harbor.

## **B. Consideration of Additional Safe Harbor Relief**

We respectfully request that the Commissions also consider providing a safe harbor that is *in addition to* and *separate from* the Proposed Safe Harbor (above). This additional safe harbor would provide relief from the ECP definition (i) when the individuals participating in a commodity pool or the operator of a commodity pool are highly sophisticated individuals and (ii) to a commodity pool that:

“has total assets exceeding \$5,000,000 and is formed and operated by a person subject to regulation under this Act or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the commodity

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<sup>5</sup> We note that if the U.S. Department of Treasury exempts foreign exchange products from the mandatory clearing requirements of the Dodd-Frank Wall Street Reform and Customer Protection Act of 2010 (the “Dodd-Frank Act”), these products will not be subject to any prescribed margin requirements.

pool or the foreign person is itself an eligible contract participant); provided that the pool is not formed for the purpose of evading regulation under Sections 2(c)(2)(B) and 2(c)(2)(C) of the CEA.”

The language in the second clause of this separate Safe Harbor is largely derived from the existing ECP definition in Section 1a(18)(A)(iv) of the CEA, but also adds an important qualifier that the commodity pool may not be “formed for the purpose of evading regulation”.

Without the additional safe harbor, the ECP definition may hamper the ability of certain legitimate market participants to remain in the institutional foreign exchange market. For example, without this safe harbor, an investment fund started with seed money from principals of its investment manager and other sophisticated investors, where the investment manager is sophisticated and registered with the CFTC as a commodity pool operator or a commodity trading advisor, may not be an ECP, and therefore, would be prohibited from trading foreign currency with its dealer counterparts in the institutional foreign exchange market.

The Commissions may also want to consider granting relief where each individual participant in a commodity pool is an ECP and the pool “was not formed for the purpose of evading regulation”, but the commodity pool does not qualify as an ECP solely because it has \$5,000,000 or less in assets. We believe such relief would be consistent with the protections and intent of the Dodd-Frank Act and the CEA.

### **C. Legal Authority**

The Commissions have the requisite rulemaking authority to adopt the Proposed Safe Harbor. There is nothing in the language of Section 1a(18)(iv)(II), which established the new language being interpreted by the Proposed CFTC ECP Rule, that would restrict the Commissions from adopting this Proposed Safe Harbor or that would limit the Commission’s ability to look to Section 1a(18)(A)(v)(I) to help define the safe harbor. In addition, the inclusion of the anti-evasion language in the Proposed Safe Harbor addresses the issue that the new provision in the CEA sought to remedy – *i.e.*, a trend by unregulated entities to pool retail investor monies together in sufficient size to constitute an ECP and, thereby, evade application of the retail foreign exchange rules in Sections 2(c)(2)(B) and 2(c)(2)(C) of the CEA. Finally, adoption of the Proposed Safe Harbor would be authorized under Section 1a(18)(C) of the CEA, which allows the CFTC to carve out classes of person whom “the Commission determines to be eligible in light of the financial or other qualifications of the person.”

The Proposed Safe Harbor does not seek to eliminate the requirement that a commodity pool be formed and operated by a person subject to regulation by the CFTC (or similar foreign regulation) contained in Section 1a(18)(A)(iv)(II) of the CEA or the *bona fide* need for the

Commissions, which is consistent with Congressional intent, to bring enforcement actions against bucket shops and fraud artists who seek to evade application of retail foreign exchange regulations. In drafting the Proposed Safe Harbor, we sought to ensure that the types of entities against whom the CFTC has brought enforcement actions for wrongdoing in this area would not be inadvertently captured. Based on our review of 35 enforcement actions brought against entities for violation of the retail foreign exchange rules in 2010 and 2011, only three of the 35 cases involved a registered commodity pool operator or commodity trading advisor and only six involved pooled assets in excess of \$10,000,000. In all cases, intent to evade retail foreign exchange regulations was clearly evidenced through the wrongful acts of the wrongdoers. We have attached a copy of our summary of the 35 CFTC actions as *Annex A*.

#### **D. The Proposed Safe Harbor is Consistent with the Administrative Procedure Act**

We believe the Commissions would be able to adopt a final rule based on the Proposed Safe Harbor without republishing it for comment while in compliance with the Administrative Procedure Act's requirement to provide notice and an opportunity for comment.<sup>6</sup> The Proposed Safe Harbor was drawn from and is consistent with language proposed by the MFA in its comment letter to you of February 22, 2011 ("**MFA Letter**"), filed during the comment period for the CFTC's proposed rule §1.3(m).<sup>7</sup> The language is also consistent with proposals and comments by a number of other comment letters filed with the Commissions.<sup>8</sup> The language is a logical

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<sup>6</sup> See Administrative Procedure Act § 4, 5 U.S.C. §§ 553(b), (c) and (d) (2006) (The Administrative Procedures Act generally requires the publication of proposed rules and an opportunity for comment, but is silent as to when changes to proposed rules must be republished in proposed form).

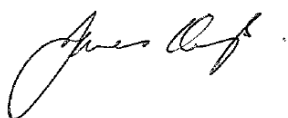
<sup>7</sup> See MFA Letter at p. 12 ("Based on discussions with the Commissions' staff, MFA understands that the Commissions did not intend for the Proposed Rule to prevent a large number of hedge funds or traditional commodity pools from qualifying as ECPs; provided that, the funds and pools were not formed for the purpose of evading the ECP definition. Therefore, we respectfully request that the final ECP definition clarify that, in general, a hedge fund or traditional commodity pool will continue to qualify as an ECP relying on Section 1a(18)(A)(v)(I) of the CEA [providing that an entity with over \$10,000,000 in assets would be an ECP].").

<sup>8</sup> See, e.g., Letter of Sandalwood Securities, Inc. (July 27, 2011) (proposing a safe harbor that (i) includes funds having in excess of \$10 million in investments, or a minimum investment requirement (e.g., \$100,000); (2) defines non-U.S. persons as ECPs; and (3) clarifies that commodity pools will qualify as ECPs if such commodity pool investors all meet other more common eligibility criteria that already serve as "sophistication threshold[s]" for many funds); Letter of Millburn Ridgefield Corporation (June 12, 2011) (recommending a carve out from the look-through rule in 1a(10)(iv)(II) for funds with over \$10,000,000 in assets or managed by a registered commodity pool operator or commodity trading advisor); Letter of Skadden, Arps, Slate, Meagher & Flom LLP (June 3, 2011) (requesting that the CFTC eliminate §1.3(m)(5)); Letter of Willkie Farr & Gallagher (Feb. 22, 2011) (recommending various different safe harbor approaches including tests that rely on registration as a commodity pool operator or commodity trading advisors and their foreign equivalents, asset size or a requirement that the commodity pool was not formed for the purpose of evading the regulatory requirements applicable to FX transactions involving "retail" investors and suggesting as well that foreign investors be excluded from the tests); and Letter of the SIFMA Asset Management Group (Sept. 15, 2011).

outgrowth of the Proposed CFTC ECP Rule and, as a result, the CFTC is entitled to incorporate the changes in its final rule defining ECP without recirculation of another proposed rule and without being in violation of the Administrative Procedure Act.<sup>9</sup>

Should you have any questions, please contact Mandy Lam of Global FX Division (212-313-1229, [mlam@gfma.org](mailto:mlam@gfma.org)) or Jennifer Han of MFA (202-730-2600, [jhan@managedfunds.org](mailto:jhan@managedfunds.org)) to follow up on the concerns we have raised in our letter.

Sincerely,



/s/ Stuart J. Kaswell

James Kemp  
Managing Director  
Global Foreign Exchange Division

Stuart J. Kaswell  
Executive Vice President & Managing Director  
Managed Funds Association

cc: The Honorable Jill E. Sommers, Commissioner, Commodity Futures Trading Commission  
The Honorable Bart Chilton, Commissioner, Commodity Futures Trading Commission  
The Honorable Scott D. O'Malia, Commissioner, Commodity Futures Trading Commission  
The Honorable Mark Wetjen, Commissioner, Commodity Futures Trading Commission  
David Stawick, Secretary, Commodity Futures Trading Commission

Daniel Berkovitz, General Counsel  
Richard Shilts, Division of Market Oversight  
Ananda Radhakrishnan, Division of Clearing and Risk

The Honorable Elisse B. Walter, Commissioner, Securities and Exchange Commission  
The Honorable Luis Aguilar, Commissioner, Securities and Exchange Commission

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<sup>9</sup> See also, *First Am. Discount Corp. v. Commodity Futures Trading Comm'n*, 222 F.3d 1008, 1015 (D.C. Cir. 2000); *American Water Works Ass'n v. EPA*, 40 F.3d 1266, 1274 (D.C. Cir. 1994); *Northeast Maryland Waste Disposal Authority v. EPA*, 358 F.3d 936 (D.C. Cir. 2004). Although the Proposed Safe Harbor would result in a different outcome from the Proposed CFTC ECP Rule, the result would be one that interested parties "should have anticipated." *Northeast Maryland Waste Disposal Authority v. EPA*, 358 F.3d 936, 952 (D.C. Cir. 2004).

The Honorable Troy A. Paredes, Commissioner, Securities and Exchange  
Commission

The Honorable Daniel M. Gallagher, Commissioner, Securities and Exchange  
Commission

Elizabeth M. Murphy, Secretary, Securities and Exchange Commission

Robert Cook, Director, Division of Trading and Markets

David Blass, Chief Counsel, Division of Trading and Markets

Enclosure

SUMMARY OF CFTC ENFORCEMENT ACTIONS  
INVOLVING RETAIL FOREX  
2010 AND 2011

2011 Enforcement Actions

CFTC v. Jade Investments Group, LLC et al., Civil Action No. 11-CV-00128 (Nov. 23, 2011).

- Defendants: Jade Investments Group, LLC and its principal, Jacob Juma Omukwe.
- Not registered with CFTC or SEC.
- Offered forex trading through website.
- Failed to segregate customer accounts and misappropriated investors' funds.
- Fraudulently obtained \$3.7 million from more than 500 customers from the United States and around the world (unclear whether customers were lower net retail).
- Only conducted forex activity.
- Customer agreements stated Jade FX is a counterparty to a trader's transactions.
- Once defendants solicited money, they pooled about a third into a forex account and the rest into accounts Omukwe exclusively controlled and used for business and personal expenses.

CFTC v. Capstone Quantitative Analysis Inc. et al., 11-CV-02887-PAB (Nov. 9, 2011).

- Defendants: Nicholas Trimble, Capstone FX Quantitative Analysis, Inc. and Beekeepers Fund Capital Management, LLC.
- Not registered with the CFTC or SEC.
- Trimble previously registered with the CFTC as an Associated Person of MF Global, not registered at the time of the activities.
- Solicited customers to trade forex in a commodity pool or managed account.
- Created a hedge fund to trade forex.
- Investment strategy highlighted a forex robot trading system known as the "Gladiator".
- Overstated assets under management; falsely claimed they were using a computer program designed by NASA; and misappropriated investors' funds.
- Fraudulently obtained at least \$1.1 million from 5 members of the retail public (friends and business associates).

CFTC v. Patrick Rakotonanahary and Cyber Market Group, LLC, 10-CV-00144-SOM-LEK (Nov. 4, 2011).

- Defendants: Cyber Market Group, LLC and its president and CEO, Patrick Rakotonanahary.



- Not registered with CFTC or SEC.
- Persuaded clients to loan funds to Cyber for the purpose of trading forex.
- Opened multiple funds at a FCM and subsequently lost all funds trading.
- Promised returns they could not pay; made false statements; misappropriated investors' funds for personal use; and operated a Ponzi scheme.
- Fraudulently obtained \$1,864,000 from members of the general public.
- Defendants primarily traded currency pairs.

CFTC v. First Capital Savings and Loan, et al., 11-CV-04741 (Nov. 4, 2011).

- Defendants: First Capital Savings and Loan (registered in NZ as an offshore finance company) and its CEO, Jeffery Alan Lowrance.
- Not registered with the CFTC or SEC.
- Claimed they could pay returns between 13-18% on certificates of deposit by trading forex.
- Defendants never actually traded the investors' funds in a forex account.
- Ponzi scheme; misappropriated funds for personal use and to fund a religious newspaper.
- Fraudulently obtained \$1 million from the general public, presumably individuals, mainly through website and mass mailings (The DOJ, in a criminal action, alleges \$25 million).

CFTC v. Queen Shoals, LLC, et al., 09-CV-00335 (Nov. 1, 2011).

- Defendants: Queen Shoals, LLC Nevada limited liability company, Queen Shoals II, LLC, Select Fund, LLC, Charlotte M. Hanson, Sidney Stanton Hanson, and other relief defendants operated by the Hansons.
- Not registered with CFTC or SEC.
- Investment strategy marketed to clients was trading forex on clients' behalf with guaranteed profits using a non-depletion account allegedly backed by gold and silver bullion.
- Defendants invested little or no investor funds into forex trading accounts.
- False statements about returns; Ponzi scheme; misappropriated investor funds for personal use.
- Fraudulently obtained \$22 million by using Queen Schoals Consultants (see below) to target individuals at or near retirement.

CFTC v. Barki, LLC, et al., 09-CV-106 (Oct. 11, 2011).

- Defendants: Barki, LLC (consisting of one registered agent and two managing members), Relief defendant Forest Glen (run by same two managing members).
- Not registered with CFTC or SEC.
- Marketed to customers that the investments were safer than investing in stocks.
- Opened four accounts at Forex Capital Markets, LLC and subsequently sustained losses of over \$10 million.

- False representations to induce investors to invest; misrepresented risk; used funds for personal expenses; and Ponzi scheme.
- Fraudulently obtained \$38 million from 79 individuals and entities, including individuals with a net worth less than \$5 million.

CFTC v. Alpha Trade Group, S.A., et al., 11-CV-1584-GAP-DAB (Sept. 28, 2011).

- Defendants: Alpha Trade Group, S.A. (Panamanian corporation) and six individual defendants.
- Not registered with the CFTC or SEC.
- Marketed investments by telling customers that the investments were risk free and guaranteed steady monthly returns.
- Purported to trade in forex, securities, commodities, energy, short-term venture capital and short and long-term REITs.
- Told customers they would be investing in pools that would trade forex and futures, but in reality the funds were misappropriated by defendants.
- False representations about risks and returns of forex investment.
- Fraudulently obtained \$1.7 million from individual residents of Florida, California, and Puerto Rico.

CFTC v. Queen Shoals Consultant, 11-CV-00132-RJC-DSC (Aug. 8, 2011).

- Defendants: Queen Shoals Consultants, LLC, Gary D. Martin, Brenda K. Martin (formed QSC).
- Not registered with the CFTC or SEC.
- Solicited customers to invest in purported “investments”; 1) “proprietary” off-exchange foreign currency trading instruments with “guaranteed” returns and “minimal risks,” which the Defendants referred to as “non-depletion accounts”; 2) Treasury bills; and 3) precious metals such as gold and silver bullion.
- Defendants did not have discretion over customer accounts; all customer funds were turned over the Hansons (see above) for a \$1.44 million referral fee.
- False representations primarily through website.
- Retail public customers.

CFTC v. Highland Stone Capital Management, LLC et al., 11-CIV-5209 (July 28, 2011).

- Defendants: Highland Stone Capital Management, LLC, Forex Capital Trading Group Inc, Forex Capital Trading Partners Inc, and three individual defendants.
- Forex Capital Trading Partners registered as CTA. No other defendants were registered with the CFTC or SEC.
- Solicited customers by making misrepresentations about incredible profits to be made through forex investing.

- Entered into an agreement with City Credit Capital (UK) Limited, a UK forex broker, and Windsor Brokers, Ltd., a Cyprus forex broker, to receive compensation in exchange for introducing customers.
- Defendants did not have discretion over customer accounts.
- False statements about performance, risk and qualifications in order to solicit investors.
- Fraudulently obtained \$1.3 million from 73 customers from the general public, half of which were elderly.

CFTC v. Jeremiah C. Yancy, et al., 10-CV-02955 (July 15, 2011).

- Defendants: Longbranch Group International, LLC and Jeremiah C. Yancy, CEO.
- Not registered with CFTC or SEC. Applied to register as a CTA, but withdrew application.
- Solicited customers by claiming they managed forex trading for non-profit organizations, including churches and organizations and guaranteed 20-40% monthly returns.
- Opened accounts at Forex Direct Dealer using a structure that allowed defendants to trade on behalf of multiple customers and allocate profits and losses among the accounts.
- False statements about returns; commingled investors' funds; misappropriated returns.
- Fraudulently obtained \$1 million from 64 clients, including members of Yancy's church where he was a pastor.

CFTC v. David L. Ortiz, et al., 11-CV-14063 (July 12, 2011)

- Defendants: David L. Ortiz, Director and CEO of Goyep International, Inc. and President of Royal Returns, Inc. Loredana Ortiz, Assistant Director of Royal Returns and Manager of Natural Health Matters, LLC.
- Not registered with the CFTC or SEC.
- Offered "Individually Managed Accounts" to customers to trade forex.
- Defendants opened four forex trading accounts in Goyep's name but only invested a quarter of investor funds, which suffered substantial losses.
- False statements about guaranteed profits; misappropriated investors' funds for personal use.
- Fraudulently obtained \$491,446.73 from eleven customers from the general public.

CFTC v. Flint-McClung Capital, LLC, et al., 11-CV-01644-CMA (June 30, 2011).

- Defendants: Flint-McClung Capital, LLC and its founder, Sawon McClung.
- Not registered with the CFTC or SEC.
- Solicited funds from investors for the purported purpose of trading forex on a margined or leveraged basis through a pooled investment fund.
- Ponzi scheme; misappropriated investor funds for personal expenses; made false statements about returns.

- Fraudulently obtained \$1.9 million from ten individual investors. Certain, if not the majority of the individuals were non-ECPs.

CFTC v. Louis J. Giddens, Jr., et al., 11-CV-02038-WSD (June 30, 2011).

- Defendants: three individuals that managed two currently dissolved commodity pools.
- Not registered with the CFTC or SEC.
- Solicited funds from investors for the purported purpose of pooling funds to trade forex by guaranteeing a 5-10% monthly return.
- Misrepresented returns to investors; misappropriated funds for personal use.
- Fraudulently obtained \$1.4 million from pool participants residing in Florida and Georgia. These customers were not ECPs.

CFTC v. Mark J. Adrian, CFTC Docket No. 11-14 (June 27, 2011).

- Defendant: Mark J. Adrian
- Registered as an Associated Person with the firm he was working with at the time. Firms, KJW Capital Management, LLC traded forex in individual customer accounts at Avidus Trading, LLC were registered as CPO and CTA. Adrian case involves a settlement and there has not been a public case brought against the firms.
- Solicited customers by offering to manage forex trading on behalf of customers using proprietary trading methodologies.
- Rather than reveal substantial trading losses, Adrian distributed false bank records to investors.
- Fraudulently obtained \$18.4 million from 58 customers. Some or all of the customers were not ECPs.

CFTC v. Invers Forex, LLC, et al., 11-CV-22275 (June 24, 2011).

- Defendants: Invers Forex, LLC and Juvenal Eduardo Machado.
- Not registered with the CFTC or SEC.
- Solicited investors by telling them God put him on earth to help people financially.
- Customers agreed to open individual forex trading accounts and authorized Machado to trade on their behalf.
- Ponzi scheme; used investor funds for personal expenses; made false statements about forex returns.
- Fraudulently obtained \$786,000 from neighbors, friends, and members of a church. These customers were not ECPs.

CFTC v. ACJ Capital, Inc., et al., 11-CV-01319-JAF (May 16, 2011).

- Defendants: AJC Capital, Inc. and its sole board member, Angel Fernando Callazo.
- Registered as a CTA.
- AJC and Callazo had authority to trade retail forex customer accounts.

- Failed to disclose investment risks; falsely claimed forex trading program was profitable; sent false statements to customers.
- Fraudulently obtained \$1,700,000 from 18 individuals. Some or all of the customers were not ECPs.

CFTC v. Jeffery L. Groendyke, 11-CV-00448 (May 4, 2011).

- Defendant: Jeffery L. Groendyke.
- Not registered with the CFTC or SEC.
- Marketed forex investment as a long-term investment suitable for retirement funds.
- Traded forex in a pooled account and also used funds, without customers' permission, to trade futures contracts.
- Failed to invest customers' other funds and instead used them for personal expenses.
- Misrepresented profitability; distributed false statements to customers; misappropriated customer funds; Ponzi scheme.
- Fraudulently obtained \$953,305 from 54 individuals, primarily individuals Groendyke knew from church. Some or all of the customers were not ECPs.

CFTC v. Willie Lee Cloud, Jr., 10-CV-00706 (Mar. 29, 2011).

- Defendants: Willie Lee Cloud and C & R Financial, Inc.
- Not registered with the CFTC or SEC.
- Solicited customers by promising double or triple profits through forex trading gains.
- Pooled customer funds and placed a portion of those funds into trading accounts in Cloud's name. Cloud actively traded in these accounts.
- Only traded a portion of customer funds; the rest were misappropriated for personal use.
- False promises of enormous returns; used investors' funds for various personal and business expenses; false statements to investors.
- Fraudulently obtained \$585,000 from 37 members of the general public.

CFTC v. Yellowstone Partners, Inc., et al., 10-CV-85-FL (Mar. 10, 2011).

- Defendants: Yellowstone Partners, Inc. and Todd Hagemann.
- Exempt from registration as a CPO under Rule 4.13(a)(2).
- Opened two accounts at an FCM in Yellowstone Partners name to trade forex for retail customers.
- Falsely claimed experience and success in forex trading; stated 100-300% profits; Ponzi scheme; misappropriation of client funds.
- Fraudulently obtained \$1,505,000 from at least 25 individuals.

CFTC v. Helmut H. Weber, 10-CV-00534-DGC (Mar. 4, 2011).

- Defendant: Helmut H. Weber.
- Not registered with the CFTC or SEC.

- Solicited clients directly and through three websites representing that he would manage individual client accounts and promised a 3-10% monthly return on investment.
- Misappropriated investors' funds for personal use; falsely promised profits to investors; misrepresented his experience in forex trading.
- Fraudulently obtained \$280,000 from the general public.

CFTC v. Randall Lynn Stuckey, et al., 11-CV-00311 (Feb. 22, 2011).

- Defendants: Randall Lynn Stuckey and three business entities he created to facilitate forex trading activities.
- Not registered with CFTC or SEC.
- Engaged in the sale of illegal off-exchange forex futures contracts marketed to the public as a means to speculate and profit from the anticipated fluctuations in the markets for foreign currencies.
- These illegal forex futures contracts were not conducted subject to a board of trade that was designated or registered by the CFTC as a contract market or derivatives transaction execution facility for such commodity.
- False statements to induce customers to invest; false statements about investment returns; used investors' funds for personal expenses.
- Fraudulently obtained \$2.87 million from 65 individuals, including friends, members of Stuckey's church, and members of the general public. At least some of these individuals were not ECPs.

CFTC v. Larry Benny Groover, et al., 11-CV-00064-RAS-DDB (Feb. 17, 2011).

- Defendant: Larry Benny Groover and relief defendant Joanne Groover.
- Not registered with the CFTC or SEC.
- Defendant Larry Groover was convicted of securities fraud, among other things, and as a result his wife, Joanne Groover opened at least four forex accounts at a FCM.
- Told customers that Larry Groover would be managing the forex accounts.
- Only deposited approximately half of customer funds into forex accounts; misappropriated the other half.
- A customer, Ronald J. Washington created RJW Enterprises, LLC in order to invest \$250,000 with Larry Groover. Larry Groover lost nearly all of the funds in forex trading in less than a month.
- Ponzi scheme.
- Fraudulently obtained and pooled \$1.4 million from 22 individuals.

CFTC v. Keith F. Simmons, et al., 11-CV-23-RJC-DCK (Feb. 16, 2011).

- Defendants: four individuals and the entities they controlled.
- Divine Stewardship, LLC was registered as an Investment Adviser and Jonathan Davey as an Investment Adviser Representative in Ohio.

- No other defendants registered at the time. Deanna Salazar was previously registered with the CFTC as an Associated Person of another firm but not at the time of the fraudulent activity.
- Solicited investors for the purpose of trading a pooled investment in connection with forex transactions.
- Investor funds were misappropriated rather than invested.
- Ponzi scheme; misappropriation of investors' funds; false representations about risk and experience in forex; provided false documents to customers.
- Fraudulently obtained \$35 million from 240 individuals or entities. At least some of the customers were not ECPs.

CFTC v. PMC Strategy, LLC, et al., 11-CV-73 (Feb. 14, 2011).

- Defendants: PMC Strategy, LLC and two controlling principals.
- Not registered with the CFTC or SEC.
- Solicited customers for the purported purpose of trading a pooled investment operated and managed by defendants in connection with forex.
- Defendants pooled some customer funds for forex but used remaining funds for personal expenses.
- Ponzi scheme; misappropriated investor funds for client use.
- Fraudulently obtained \$669,000 from the general public.

CFTC v. Anthony Eugene Linton, 11-CV-00021-DCB (Jan. 24, 2011).

- Defendant: Anthony Eugene Linton, d/b/a the Private Trading Pool.
- Not registered with the CFTC or SEC.
- Solicited friends and acquaintances to invest in a pool that he established for the purpose of trading forex. Promised a 8.33% monthly return on investment.
- Instead of investing funds, defendant used funds for personal expenses and to pay existing participants.
- Ponzi scheme; misappropriated investors' funds.
- Fraudulently obtained \$650,000 from 19 individuals.

In the Matter of Darren Lee Shanks and Forex Auto Profits, LLC, CFTC Docket No. 11-03 (Jan. 7, 2011).

- Defendants: Darren Lee Shanks and Forex Auto Profits, LLC (run out of Shank's home).
- Not registered with the CFTC or SEC.
- Solicited customers by promising 3-5% returns on forex investments.
- Shanks maintained trading accounts at four registered FCMs in which he invested approximately 2/3 of investors' funds.
- Used investors' funds for other unrelated investments and personal expenses.
- False statements to investors; misappropriated investors' funds.

- Fraudulently obtained \$3.3 million from 45 investors.

### 2010 Enforcement Actions

CFTC v. FX Professional International Solutions, Inc., et al., 10-CV-22311-PCH (Dec. 7, 2010).

- Defendants: FX Professional International Solutions, Inc. and its two principals.
- Not registered with the CFTC or SEC.
- Solicited customers through friends and acquaintances by representing that their forex trading had been very successful for a number of years and promised at least one customer at least 20% annual profits.
- Unclear how much, if any, of investors' funds were actually invested.
- False statements about past investment returns; provided false monthly statements to customers.
- Fraudulently obtained \$535,000 from four members of the general public who were not ECPs.

CFTC v. CRE Capital Corporation, et al., 09-CV-00115-RWS (Dec. 7, 2010).

- Defendants: James Ossie and his corporation, CRE Capital Corporation.
- Not registered with the CFTC or SEC.
- Solicited customers by promising they would earn 10% within 30 days by trading U.S. and Japanese currency pairs.
- Defendants pooled investors' funds and lost approximately \$4.4 million trading forex.
- Ponzi scheme.
- Fraudulently obtained \$25 million from 100 investors.

CFTC v. Ronald E. Satterfield, et al., 10-CV-2893-RMPG (Nov. 23, 2010).

- Defendants: Ronald E. Satterfield and his companies, Graham Street Forex Group, LLC and Shore-2-Summit Financial, LLC, and Nicholas Bos.
- Not registered with the CFTC or SEC.
- Defendants solicited friends, family, church members, and others by guaranteeing monthly profitable returns on forex trading.
- Satterfield, who had authority over the forex accounts, lost virtually all of the funds invested.
- Ponzi scheme; misappropriated investors' funds for personal use.
- Fraudulently obtained \$3.3 million from 70 individuals residing in at least four states, including friends, family, and church members.

CFTC v. Complete Developments, et al., 10-CV-02287 (Oct. 7, 2010).

- Defendants: Complete Developments, LLC and Investment Institutional Inc., Global Strategic Marketing Inc. and four individuals.



- Not registered with the CFTC or SEC.
- Solicited customers to invest in “professionally managed” accounts to trade off-exchange foreign currency contracts that would pay a guaranteed rate of interest.
- Customer funds were used for defendant's personal forex trading accounts.
- Customer funds were comingled with CDL and I3 accounts and were used for defendants' personal expenses.
- Fraudulent statements about guaranteed returns; Ponzi scheme.
- Fraudulently obtained \$8.1 million from hundreds of members of the general public who were not ECPs.

CFTC v. Total Call Group, Inc., et al., 10-CV-00513 (Sept. 30, 2010).

- Defendants: Total Call Group, Inc. and its two principals.
- Not registered with the CFTC or SEC.
- Defendants solicited four customers to invest based on misrepresentations about their past success in forex trading.
- Defendants pooled customers' investments into three forex trading accounts.
- Defendants provided false reports and statements to clients showing the profitability of forex investments when in fact the defendants lost nearly all of the investors' funds.
- Fraudulently obtained \$808,000 from at least four customers.

CFTC v. Billion Coupons, Inc., 09-CV-00068-JMS-LEK (Sept. 2, 2010).

- Defendants: Marvin Cooper and his company, Billion Coupons, Inc.
- Not registered with the CFTC or SEC.
- Solicited customers to invest in forex trading, promising 15-25% monthly returns.
- Many of defendants' agents and employees who solicited customers invested in the funds themselves.
- Only deposited approximately half of investors' funds into forex and on-exchange futures contracts.
- Ponzi scheme; affinity fraud.
- Fraudulently obtained \$4.4 million from more than 125 customers, some or all of which were not ECPs.

CFTC v. Highland Capital Management, et al., 10-CV-2654 (June 24, 2010).

- Defendants: Highland Capital Management and Glenn Kane Jackson.
- Exempt from registration as a CPO under Rule 4.13(a)(4) and as a CTA under Rule 4.14(a)(8).
- Defendants solicited funds from pool participants, for the purpose of pooling money to create capital growth through forex trading.
- Only a portion of customers' funds were actually invested in forex accounts.
- False claims about success of past forex trading; sent false account statements to investors.

- Fraudulently obtained \$4.305 million from 23 members of the general public.

CFTC v. CMA Capital Management, LLC, et al., 10-CV-21074-MGC (Apr. 12, 2010).

- Defendants: CMA Capital Management, LLC and Claudio Aliaga.
- Not registered with the CFTC or SEC.
- Solicited customers by making false statements regarding past forex trading success and guaranteeing 2-3% monthly returns.
- Aliaga, the only person with trading authority, deposited less than half of investors' funds into forex trading accounts; he used the remaining funds for business and personal expenses.
- Ponzi scheme.
- Fraudulently obtained \$4.5 million from at least 125 members for the general public. Some or all of the customers were not ECPs.

CFTC v. Trevor Cook, et al., 09-SC-3332(MJD/JJK) (Mar. 2, 2010).

- Defendants: Trevor Cook, Patrick Kiley, and six entities they controlled.
- Not registered with CFTC or SEC. Cook was intermittently registered with the CFTC as an Associated Person, but not at time of activities.
- Solicited the public to invest in their "foreign currency arbitrage" trading program in which they represented customers' funds would be placed in segregated accounts at Crown Forex, SA, a now bankrupt Swiss forex entity. Customers' investments were in fact placed in an account named "Crown Forex, LLC" and held with a bank in Minnesota.
- Kiley solicited customers through his radio show, "follow the money, truth seekers."
- Told investors that their investments would be fully hedged, fully liquid, involved no market risk, and earned 10-12% in profits per year.
- Used investor funds for personal expenses, including a hotel, house, boat, and submarine as well as to purchase a share in a Swiss company that trades forex,
- Misappropriated investor funds.
- Fraudulently obtained \$190 million from over 900 U.S. customers. Some or all of the customers were not ECPs.