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U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
SANTA ANA

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

23 \_\_\_\_\_ )  
24 )  
25 **U.S. COMMODITY FUTURES** )  
26 **TRADING COMMISSION** )  
27 )  
28 **Plaintiff,** )  
29 )  
30 )  
31 **FOREX LIQUIDITY LLC.** )  
32 )  
33 **Defendant** )  
34 \_\_\_\_\_ )

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

35  
36 **COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF,**  
37 **AND A CIVIL MONETARY PENALTY**

38  
Complaint  
Case No. \_\_\_\_\_

1 **I. JURISDICTION AND VENUE**

2  
3 1. The Commodity Exchange Act, as amended, 7 U.S.C § 1 *et seq.*  
4 (2002) (“Act”), establishes a comprehensive system for regulating commodity  
5 futures contracts and options on commodity futures contracts and those who are  
6 registrants pursuant to the Act. This Court has jurisdiction over this action  
7 pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), which authorizes the  
8 Commodity Futures Trading Commission (“Commission” or “CFTC”) to seek  
9 injunctive relief against any person or entity whenever it shall appear to the  
10 Commission that such person or entity has engaged, is engaging, or is about to  
11 engage in any act or practice constituting a violation of any provision of the Act or  
12 any CFTC rule, regulation or order.

13 2. Venue properly lies with the Court pursuant to Section 6c of the Act,  
14 7 U.S.C. § 13a-1 (2002), in that the Defendant is found in, inhabits, or transacts  
15 business in this district, and the acts and practices in violation of the Act occurred,  
16 are occurring, or are about to occur within this district.

17 **II. SUMMARY**

18 3. From at least February 2006 to the present, defendant Forex Liquidity  
19 LLC (“FXLQ”) has been registered with the Commission as a futures commission

1 merchant (“FCM”). As a registered FCM, FXLQ has solicited and accepted retail  
2 customer funds for the purpose of acting as a counterparty, or offering to act as the  
3 counterparty, to foreign currency transactions (“forex transactions”). Since at least  
4 February 2006, FXLQ has been a member of the National Futures Association  
5 (“NFA”), which is a registered futures association pursuant to Section 17 of the  
6 Act, 7 U.S.C. § 21 (2002).

7 4. As a registered FCM and a member of the NFA that acts as a  
8 counterparty or offers to act as a counterparty to forex transactions, FXLQ is  
9 required by Commission Regulation 1.17(a)(1)(C), 17 C.F.R. § 1.17(a)(1)(C)  
10 (2007), and Section 11 of NFA’s Financial Requirements to maintain adjusted net  
11 capital of at least \$1,000,000.

12 5. From at least November 30, 2007 to December 7, 2007, FXLQ’s net  
13 capitalization has been below the adjusted net capital required by the Act and  
14 Commission Regulation 1.17(a), 17 C.F.R. § 1.17(a). Specifically, because FXLQ  
15 had, as of December 7, 2007, an adjusted net capital deficit of approximately \$11.6  
16 million dollars, it necessarily failed to meet the minimum financial requirements.  
17 FXLQ has also failed to maintain books and records that it is required to maintain  
18 pursuant to the Act and Commission Regulation 1.18, 17 C.F.R. § 1.18 (2007).  
19 Currently, FXLQ’s adjusted net capital deficit is approximately \$3 million.



1 **B. Defendant**

2 9. **Forex Liquidity LLC** is a California limited liability company whose  
3 principal place of business is located at 6 Hutton Centre Drive, Suite 1400, Santa  
4 Ana, California 92707. On February 2, 2006, FXLQ became registered as a FCM  
5 with the Commission. FXLQ is also a member of the NFA.

6 **IV. FACTS**

7 10. Since it began operations, FXLQ has acted as a FCM and solicited  
8 customers to engage in forex transactions. FXLQ acts as the counterparty to retail  
9 customers' forex transactions.

10 11. Pursuant to Section 4f(b) of the Act, 7 U.S.C. § 6f(b) (2002), and  
11 Commission Regulation 1.17(a)(1), 17 C.F.R. § 1.17(a)(1) (2007), FXLQ is  
12 required to maintain at least a minimum amount of adjusted net capital to operate  
13 as a FCM. According to Commission Regulation 1.17(c)(1), "net capital" means  
14 the amount by which current assets exceed liabilities. Because FXLQ is a member  
15 of the NFA, it must meet the minimum adjusted net capital required by the NFA.  
16 *See* 17 C.F.R. § 1.17(a)(1)(C) (2007). Pursuant to Section 11 of the NFA's  
17 Financial Requirements, FXLQ is required to maintain a minimum adjusted net  
18 capital of \$1,000,000.

1           12. Pursuant to Section 4f(b) of the Act, 7 U.S.C. § 6f(b) (2002), and  
2 Commission Regulation 1.17(a)(4), 17 C.F.R. § 1.17(a)(4) (2007), a FCM that is  
3 not in compliance with Commission Regulation 1.17 or is unable to demonstrate  
4 such compliance must transfer all customer accounts and immediately cease doing  
5 business as a FCM until such time as the firm is able to demonstrate such  
6 compliance.

7           13. As a registered FCM, FXLQ is required pursuant to Commission  
8 Regulation 1.10(a)-(d), 17 C.F.R. § 1.10(a)-(d) (2007), to submit a monthly report  
9 that includes a statement of financial condition and a statement of the computation  
10 of the minimum adjusted net capital requirements on a form designated as a 1-FR-  
11 FCM.

12           14. In August 2007, during an examination by NFA, NFA noted that  
13 FXLQ's June 30, 2007, 1-FR-FCM listed as a current asset a bond purportedly  
14 issued by ABN-AMRO with a claimed market value of \$35 million. FXLQ  
15 represented that this bond was being held at Malory Investments ("Malory"), a  
16 registered broker dealer.

17           15. On FXLQ's 1-FR-FCM dated October 31, 2007, which FXLQ  
18 submitted to NFA on November 26, 2007, there were listed as current assets  
19 securities with a market value of approximately \$41 million.

1           16. During the examination, FXLQ provided NFA with documents that  
2 FXLQ represented were account statements from Malory to support the  
3 representation that the ABN AMRO bond, as well as other cash assets of the firm,  
4 were being held at Malory.

5           17. FXLQ represented to NFA that it obtained the ABN AMRO bond  
6 from FXLQ's president and principal, Robert Gray ("Gray"), who in turn obtained  
7 it from a company called Swiss Imperial Trust A.G. ("Swiss Imperial") in  
8 exchange for contractual services.

9           18. On November 28, 2007, NFA received documents from the Financial  
10 Industry Regulatory Authority ("FINRA") (formerly the National Association of  
11 Securities Dealers) evidencing that the ABN AMRO bond and cash, which FXLQ  
12 represented were being held at Malory, were actually being held in Switzerland by  
13 Swiss Imperial in an account in the name of Malory.

14           19. The owner of Swiss Imperial is also a part owner and principal of  
15 Malory.

16           20. Because it appeared that the ABN AMRO bond had never left the  
17 possession of Swiss Imperial, and that the information provided by FXLQ  
18 regarding where the bond and other firm assets were being held was not accurate,  
19 NFA informed FXLQ that it did not exercise sufficient control over the bond and

1 the cash held by Swiss Imperial to qualify as current assets. Accordingly, on  
2 November 29, 2007, NFA directed FXLQ to cause all firm assets being held at  
3 Swiss Imperial to be transferred to a regulated United States financial institution by  
4 5:00 p.m. on Friday, November 30, 2007 and provide evidence of such transfer.

5 21. The same day that NFA directed FXLQ to execute the transfer  
6 described above, FXLQ represented that it was unaware that the ABN AMRO  
7 bond and firm cash were being held at Swiss Imperial. FXLQ, however,  
8 represented that it had been working on transferring the ABN AMRO bond and  
9 firm cash to a United States bank for approximately a week. When NFA asked  
10 Gray for the name of the bank to which the assets were being transferred, Gray was  
11 unable to recall the full name of the bank, but indicated it included the word  
12 "Commonwealth" in its name.

13 22. On December 1, 2007, FXLQ sent e-mails to NFA in which it  
14 represented that the transfer had been effected from Swiss Imperial to  
15 "Commonwealth." FXLQ represented that the transfer only included cash, thereby  
16 suggesting that the ABN AMRO bond had been liquidated.

17 23. On December 3, 2007, FXLQ represented to NFA that the transfer  
18 had been made to Commonwealth Financial Network ("CFN"), a registered broker  
19 dealer, and provided NFA with an account number and CFN's web site address.



1           24.    CFN does not have an account for FXLQ and the account number that  
2   FXLQ provided to NFA was fictitious.

3           25.    On December 4, 2007, FXLQ's General Counsel forwarded to NFA a  
4   letter from a firm identifying itself as "Commonwealth Financial P.M.S.", which  
5   stated that "FXLQ c/o Robert Gray has funds in the amount of \$47,800,000 on  
6   deposit in an account at Commonwealth Financial P.M.S." This letter contained  
7   CFN's web site address. Commonwealth Financial P.M.S. is not in any way  
8   affiliated with CFN, and it is not a registered broker dealer.

9           26.    On December 3, 2007, FXLQ also provided NFA with net capital  
10   computations that purported to show that, as of November 30, 2007, FXLQ was in  
11   capital compliance. One computation included the assets purportedly at  
12   "Commonwealth." A second computation purported to show that even if the assets  
13   that FXLQ claims are at "Commonwealth" are non-current assets, the firm would  
14   be in capital compliance. Together these two calculations shall be referred to as  
15   "FXLQ's November 30, 2007 net capital calculations."

16          27.    FXLQ's October 31, 2007, Form 1-FR-FCM included a liability of  
17   accounts payable and accrued expenses of approximately \$10 million, which was  
18   not included, however, in either of FXLQ's November 30, 2007 net capital  
19   calculations.

1           28.    On December 3, 2007, NFA requested that FXLQ provide evidence  
2   that the accounts payable and accrued expenses listed on its October 31, 2007, 1-  
3   FR-FCM had been paid. To date, FXLQ has not provided any documentary proof  
4   to the NFA that the accounts payable and accrued expenses listed on its October  
5   31, 2007, 1-FR-FCM have been paid.

6           29.    Both of FXLQ's November 30, 2007 net capital calculations also  
7   indicated that over \$11.2 million of FXLQ's assets were being held at Malory. In  
8   fact, Malory's bank accounts had less than \$150,000 attributable to, or being held  
9   in the name of, FXLQ.

10          30.    On December 4, 2007, NFA directed FXLQ to transfer the funds that  
11   FXLQ claimed were at Malory to the firm's bank account at a U.S. bank. Further,  
12   NFA again directed FXLQ to provide evidence that the accounts payable and  
13   accrued expenses listed on its October 31, 2007, Form 1-FR-FCM had been paid,  
14   and directed the firm to provide a complete listing of the firm's liabilities including  
15   support for such liabilities. NFA gave FXLQ until 3:00 p.m. on December 4, 2007  
16   PST to comply with these directives and FXLQ failed to comply.

17          31.    As of December 7, 2007, FXLQ had failed to provide to NFA any  
18   independent credible evidence that any assets purportedly held at Swiss Imperial or  
19   Malory have actually been transferred. Nor had the firm provided support for its

1 liabilities or independent evidence of its compliance with applicable NFA financial  
2 requirements.

3 32. On December 4, 2007, FXLQ acknowledged that neither of the net  
4 capital calculations that FXLQ provided to NFA on November 30, 2007 included  
5 liabilities owed to several other NFA Member FCMs that had positions and cash at  
6 FXLQ. As of November 30, 2007, these liabilities totaled approximately \$14  
7 million.

8 33. Although FXLQ reported excess net capital of approximately \$12.3  
9 million on the November 30, 2007 net capital calculation that did not include the  
10 Commonwealth funds, NFA determined that FXLQ had no excess net capital and,  
11 in fact, was severely under its \$1 million net capital requirement. Specifically, as  
12 of December 7, 2007, FXLQ's calculations overstated its assets by the  
13 approximately \$11.2 million purportedly held at Malory. Further, as of December  
14 7, 2007 it understated its liabilities by the approximately \$14 million owed to the  
15 other NFA Member FCMs. Therefore, because FXLQ's assets were  
16 approximately \$19 million dollars, and its liabilities were approximately \$29.6  
17 million, FXLQ was under its \$1,000,000 net capital requirement by approximately  
18 \$11.6 million as of December 7, 2007.



1 requirements for FCMs that are registered with the CFTC and are members of the  
2 NFA, in violation of Section 4f(b) of the Act, 7 U.S.C. § 6f(b) (2002), and  
3 Commission Regulations 1.17(a)(1)(C) and 1.17 (a)(4), 17 C.F.R. §§ 1.17(a)(1)(C)  
4 and 1.17 (a)(4) (2006).

5 38. From at least November 30, 2007 until December 5, 2007, FXLQ was  
6 not in compliance with Commission Regulation 1.17 and failed to transfer all  
7 customer accounts and immediately cease doing business as a FCM until such time  
8 as it could demonstrate such compliance, in violation of Section 4f(b) of the Act,  
9 7 U.S.C. § 6f(b) (2002), and Commission Regulation 1.17(a)(4), 17 C.F.R.  
10 § 1.17(a)(4) (2007).

11 39. Each day FXLQ failed to satisfy its adjusted net capitalization  
12 requirement is alleged as separate and distinct violations of Section 4f(b) of the  
13 Act, 7 § 6f(b) (2002), and Commission Regulations 1.17(a)(1)(C) and 1.17 (a)(4),  
14 17 C.F.R. §§ 1.17(a)(1)(C) and 1.17 (a)(4) (2007).

15 40. Each day FXLQ failed to transfer funds and/or continued doing  
16 business as a FCM without demonstrating compliance with its adjusted net capital  
17 requirement is alleged as separate and distinct violations of Section 4f(b) of the  
18 Act, 7 U.S.C. § 6f(b) (2002), and Commission Regulation 1.17(a)(4), 17 C.F.R.  
19 § 1.17(a)(4) (2007).



1 Commission Regulations, 1.17(a)(1)(C), 1.17(a)(4) and 1.18, 17  
2 C.F.R. §§ 1.17(a)(1)(C), 1.17(a)(4) and 1.18 (2007);  
3

4 b) an order directing that Defendant make an accounting to the  
5 court of all assets and liabilities, together with all the funds received  
6 from or sent to persons in connection with the trading of foreign  
7 currency transactions;  
8

9 c) an order directing Defendant to disgorge, pursuant to such  
10 procedure as the Court may order, all benefits received from the acts  
11 or practices which constitute violations of the Act, as described  
12 herein, and interest thereon from the date of such violations;  
13

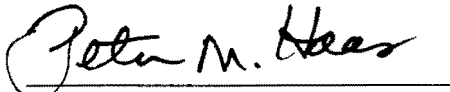
14 d) an order directing Defendant to make full restitution to every  
15 customer whose funds were lost as a result of acts and practices which  
16 constituted violations of the Act and Regulations, described herein,  
17 and interest thereon from the date of such violations;  
18

19 e) civil penalties against the Defendant in the amount of not more  
20 than the higher of \$130,000 or triple the monetary gain to the  
21 Defendant for each violation by the Defendant of the Act or  
22 Commission Regulations; and  
23

24 f) such other and further remedial ancillary relief as the Court may  
25 deem appropriate.  
26  
27  
28

29 Date: 12/13/07  
30

31 Respectfully submitted  
32

33   
34

35 Richard P. Foelber  
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