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**UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH  
CENTRAL DIVISION**

	)	
	)	
<b>U.S. Commodity Futures</b>	)	<b>Case No:</b> 2:10-cv-01172-TS
<b>Trading Commission,</b>	)	
	)	<b>Judge:</b> Judge Ted Stewart
<b>Plaintiff,</b>	)	
	)	<b>COMPLAINT FOR INJUNCTIVE,</b>
<b>vs.</b>	)	<b>OTHER EQUITABLE RELIEF AND</b>
<b>MXBK Group S.A. de C.V. and</b>	)	<b>FOR CIVIL PENALTIES UNDER</b>
<b>MBFX S.A.,</b>	)	<b>THE COMMODITY EXCHANGE</b>
	)	<b>ACT, AS AMENDED,</b>
<b>Defendants.</b>	)	<b>7 U.S.C. §§ 1 <i>et seq.</i></b>
	)	

**I. SUMMARY**

1. From at least 2005 to the present, Defendants MXBK Group S.A. de C.V. (“MXBK”), a Mexican financial services company, and its forex trading division, MBFX S.A. (“MBFX”), have accepted at least \$28 million from over 800 U.S. customers, including some

customers residing within this District, for the purpose of trading leveraged or margined foreign currency (“forex”) transactions in pooled accounts on behalf of those customers.

2. Defendants post monthly trading results on their website and make monthly statements available electronically to their U.S. customers that report the profits and losses apportioned to the customers. During the period October 2005 through April 2009, Defendants lost approximately \$29 million. During the period of June 2008 through April 2009, the period of illegal conduct charged herein, they lost approximately \$19.4 million. In at least 8 separate months during that period, Defendants reported trading profits when they actually had incurred losses, sometimes exceeding \$1 million per month. Consequently, many of their monthly customer statements and representations of profitable trading on their website for those same months were false.

3. Moreover, Defendants reported to their customers that in November 2008, that they incurred huge losses, approximating 99% of most customer account balances. In numerous reports to customers, Defendants attributed these losses to alleged wrongdoing by Advanced Currency Markets (“ACM”), a Swiss forex dealer with which MXBK traded its pooled forex accounts over the internet. However, Defendants last traded with ACM in February 2008, and, from March 2008 through October 2008, they lost more than \$18 million trading with other forex dealers. Defendants also lost approximately \$493,000 trading forex in November 2008 and approximately \$1 million trading forex from December 2008 through April 2009.

4. By virtue of this conduct and the further conduct described herein, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation of Sections 4b(a)(2)(A), (B) and (C) of the Commodity Exchange Act (“Act”), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC

Reauthorization Act of 2008 (“CRA”)), § 13102, 122 Stat. 1651 (enacted June 18, 2008) and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 6b(a)(2)(A), (B) and (C).

Accordingly, the U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”) brings this action pursuant to Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, to enjoin Defendants’ unlawful acts and practices and to compel its compliance with the Act. In addition, the CFTC seeks restitution, disgorgement, rescission, civil monetary penalties and such other equitable relief as this Court may deem necessary or appropriate. Unless restrained and enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below.

## II. JURISDICTION AND VENUE

5. Plaintiff U.S. Commodity Futures Trading Commission brings this action against MXBK and MBFX for engaging in acts and practices that violate provisions of the Act, as amended, to be codified at 7 U.S.C. § 1 *et seq.*

6. This Court has jurisdiction over this action pursuant to Sections 2(c)(2)(C)(i)-(iii) and 6c(a) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C)(i)-(iii) and 13a-1(a). Section 6c(a) of the Act authorizes the CFTC to seek injunctive relief against any person whenever it shall appear to the CFTC that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order promulgated thereunder.

7. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, to be codified at 7 U.S.C. § 13a-1(e), in that Defendant is found in, inhabits, or transacts

business in this District, and/or the acts and practices in violation of the Act have occurred, are occurring, or are about to occur, within the District, among other places.

### III. PARTIES

8. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the responsibility for administering and enforcing the provisions of the Act and the Commission Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2010).

9. Defendant **MXBK Group S.A. de C.V.**, formerly known as MexBank Group SA de CV (“MexBank”), is a private Mexican financial services holding company that represents that its offices are located at World Trade Center, Montecito 38, Piso 39 Ofic 34, Col. Napoles, C.P. 03810, Mexico, DF. Neither MXBK nor MexBank has ever been registered in any capacity with the Commission.

10. Defendant **MBFX S.A.** is a solely-owned forex division of MXBK. MBFX has never been registered in any capacity with the Commission.

11. MXBK and MBFX operate as a common enterprise. Prior to approximately September 2007, MXBK managed its forex account trading under its former name MexBank. Since approximately September 2007, MXBK has managed its forex account trading through Defendant MBFX S.A. However, both prior to and after September 2007, Defendants’ customers have been instructed to send their funds to bank accounts in the name of MexBank. Moreover, Defendants share common corporate officers and a common website.

#### IV. FACTS

##### A. The MXBK Forex Trading Enterprise

12. Defendants, through unnamed corporate officers, offer retail investors the opportunity to speculate in leveraged or margined forex transactions through apportioned interests in the forex trading accounts that Defendants manage. Until 2008, Defendants offered a single forex trading managed account. Beginning in at least 2008, Defendants offered retail customers the opportunity to speculate in forex through apportioned interests in any of four separate managed programs: Alfa 1, Dice 10, Delta 50 and Omega 100.

13. In their marketing materials, Defendants describe Alfa 1 as their “original managed account targeting maximum earnings of .9615% per week per 52-week year,” requiring a minimum investment of \$1,000; Dice 10 as a “High-Risk managed account” requiring a minimum investment of \$10,000; Delta 50 as a “fully automated managed account” traded in three-month cycles requiring a minimum investment of \$50,000; and Omega 100 as “our only Guaranteed Earnings and Full Principal Protected No-Risk managed account targeting conservative earnings,” providing 7.5% guaranteed annual earnings on a \$100,000 minimum investment.

14. At all relevant times, customers have entered into a Currency Exchange Agreement (“Agreement”) with Defendants. The terms of the Agreement were consistent throughout the relevant time. In particular, the Agreement provides, in part, that a customer is entitled to the first .9615% of weekly target gains set by Defendants on his or her apportioned account balance.

15. The Agreement further provides that “all combined open transactions at any one time shall not risk more than 20% of Customer’s balance.”

16. Defendants list the monthly trading results for their various forex trading programs on their website. Beginning in at least 2008, these programs were entitled Alpha 1, Delta 50, Dice 10 and Omega 100.

17. Defendants also have claimed on their website that their forex trading was managed through an entity named Value Asset Management AG (“VAM”). VAM holds itself out to be a Swiss asset management company. However, an officer of VAM has stated that VAM never traded forex on behalf of Defendants.

18. U.S. customers sign up to participate in the Defendants’ forex trading enterprise by completing forms electronically on the Defendants’ internet website. However, when completing their customer applications, U.S. customers are required to designate certain U.S. individuals or entities, sometimes called “resellers” or “introducers,” who in turn act as liaisons for U.S. customers with Defendants’ operations in Mexico. The resellers or introducers receive rebates described as “PIPs,” which are purportedly based upon the volume of trading.

19. Some U.S. resellers or introducers have other individuals or entities “introducing” customers on their behalf and share their PIPs with these other individuals or entities in a pyramid-type structure.

**B. Defendants’ Misrepresentations and False Statements to Customers**

20. Defendants, through unnamed corporate officers, made numerous misrepresentations and false statements to their customers.

21. For the eleven months from June 2008 through April 2009, Defendants reported realized trading profits for nine of the months both on their website and in monthly statements made available electronically to their US customers even though overall they lost \$19.4 million.

Moreover, while reporting profits for the following months, Defendants incurred the following approximate realized trading losses:

- a. June 2008 (\$131,000)
- b. July 2008 (\$642,000)
- c. August 2008 (\$11.3 million)
- d. September 2008 (\$1.8 million)
- e. October 2008 (\$4.1 million)
- f. February 2009 (\$858,000)

22. For the longer period of October 2005 through April 2009, Defendants lost approximately \$29 million trading forex.

23. Moreover, in December 2008, Defendants reported to their customers that they had incurred huge losses in November 2008 approximating 99% of customer account balances in the Alfa 1, Delta 50 and Dice 10 programs. Defendants subsequently provided periodic “updates” regarding the purported November 2008 losses. Some of these updates indicate that they were authored by Eduardo Trejo, Chairman, and others were authored by Juan Carlos Harris and Irvin Navarrete, both identified as “Lead Counsel.”

24. In one update, Defendants initially attributed the November losses to “unethical actions” involving increased margin requirements by their “liquidity providers.” In later updates, Defendants only identified a single liquidity provider, namely, ACM, as responsible for the November 2008 losses through alleged “manipulation.”

25. ACM is an internet forex trading dealer located in Switzerland with which Defendants have traded forex on behalf of their customers. However, Defendants last traded with ACM in February 2008, and did not trade with ACM in November 2008. In November 2008, Defendants lost approximately \$493,000 trading with another internet forex dealer in the United Kingdom, which was less than 1% of their aggregate reported customer account balances.

However, from May 2008 through October 2008, Defendants' losses exceeded \$18.7 million trading with other forex dealers.

26. In their updates, Defendants have reported to their customers that they are pursuing legal remedies in Switzerland against ACM to recoup the losses purportedly incurred in November 2008. Upon information and belief, Defendants apparently are pressing some type of legal claim against ACM in Switzerland.

27. However, as recently as April 2010, Defendants have refused to allow customers to withdraw any of their funds remaining from December 2008 or deposited during the period December 2008 through April 2009. In an update, dated April 9, 2010, Lead Counsel Navarrete claimed that due to the legal controversy with ACM, those funds, which are held in an unnamed bank, are still subject to a "hold" by a "MiFID" (*i.e.*, Markets in Financial Instruments Directive) regulator in Europe.

28. In fact, there is no such entity as a MiFID regulator in Europe. Moreover, Swiss Banking regulators have advised Commission staff that there has never been any freeze or hold on any funds deposited with ACM, only a temporary monitoring of ACM payouts exceeding \$1 million from April 16, 2009 to July 29, 2009.

### **C. The Nature of the Forex Transactions**

28. Neither Defendants nor the purported counterparties to the forex transactions were financial institutions, registered broker dealers, insurance companies, financial holding companies, or investment bank holding companies or the associated persons of financial institutions, registered broker dealers, insurance companies, financial holding companies, or investment bank holding companies under Section 2(c)(2)(B)(i)(II) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(B)(i)(II).



29. Most of Defendants' customers were not "eligible contract participants" as that term is defined in Section 1a(12)(A)(xi) of the Act, as amended, to be codified at 7 U.S.C. § 1a(12) (an "eligible contract participant," as relevant here, is an individual with total assets in excess of (i) \$10 million, or (ii) \$5 million and who enters the transaction "to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual").

30. The forex transactions engaged in by Defendants were entered into on a leveraged or margined basis. Defendants were required to provide only a percentage of the value of the forex contracts that they purchased.

31. Defendants' forex transactions neither resulted in delivery within two days nor created an enforceable obligation to deliver between a seller and a buyer that had the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these forex contracts remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

**D. The Nature of Defendants' Unnamed Corporate Officers' Roles**

32. The Defendants' unnamed corporate officers approved and authorized the dissemination to customers and prospective customers of information containing falsities through Defendants' marketing materials, Agreement, website, monthly statements and other reports and statements to customer, as set forth above in paragraphs 12 through 27.

33. The falsity of the information provided to Defendants' customers and prospective customers was so severe, the Defendants' unnamed corporate officers either knew of the falsity or acted with reckless disregard for the truth.

**V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

**Count I**

**Violations of Sections 4b(a)(2)(A) and (C) of the Act, as amended:  
Fraud and Deceit by Misrepresentation**

34. Paragraphs 1 through 31 are realleged and incorporated herein by reference.

35. Regarding Defendants' retail forex transactions, Sections 4b(a)(2)(A) and (C) of the Act, as amended, make it unlawful for any person: (A) to cheat or defraud or attempt to cheat or defraud the other person; or (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for the other person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g), that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract.

36. Since June 18, 2008, Defendants, through their unnamed corporate officers, have cheated, defrauded or deceived or attempted to cheat, defraud or deceive customers and prospective customers by, among other things, misrepresenting: (a) their trading results on their website; (b) that VAM traded Defendants' forex accounts; (c) that they incurred trading losses of 99% in November 2008; and (d) that European regulators have placed a hold on certain customer funds.

37. Defendants' unnamed corporate officers intentionally or recklessly engaged in the acts and practices described in this Count One.

38. Defendants' unnamed corporate officers therefore have violated Sections 4b(a)(2)(A) and (C) of the Act, as amended, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C). Defendants are liable for their unnamed corporate officers' acts, omissions and failures in violation of the Act as described in this count, pursuant to Section 2(a)(1)(B) of the Act, as amended, to be codified at 7 U.S.C. § 2(a)(1)(B), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2010).

39. Each misrepresentation, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(A) and (C) of the Act, as amended.

## **Count II**

### **Violations of Sections 4b(a)(2)(B) of the Act, as amended: False Reports or Statements**

40. Paragraphs 1 through 31 are realleged and incorporated herein by reference

41. Regarding the Defendants' retail forex transactions, Sections 4b(a)(2)(B) of the Act, as amended, makes it unlawful for any person: (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g), that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract.

42. Since June 18, 2008, Defendants, through unnamed corporate officers, have willfully made or caused to be made false reports or statements to their customers regarding the profitability of their accounts.

43. Defendants' unnamed corporate officers intentionally or recklessly engaged in the acts and practices described in this Count Two.

44. Defendants' unnamed corporate officers therefore have violated Sections 4b(a)(2)(B) of the Act, as amended, to be codified at 7 U.S.C. §§ 6b(a)(2)(B). Defendants are liable for their unnamed corporate officers' acts, omissions and failures in violation of the Act as described in this count, pursuant to Section 2(a)(1)(B) of the Act, as amended, to be codified at 7 U.S.C. § 2(a)(1)(B), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2010).

45. Each false report or statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(B) of the Act, as amended.

## **VI. RELIEF REQUESTED**

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:

A. Find Defendants liable for violating Sections 4b(a)(2)(A), (B) and (C) of the Act, as amended, to be codified at 7 U.S.C. §§ 6b(a)(2)(A), (B) and (C);

B. Enter an interim order directing that Defendants make an accounting to the Court of all of Defendants' assets and liabilities, together with all funds Defendants received from and paid to persons in connection with forex, commodity futures and options transactions or purported forex, commodity futures and options transactions, including the names, mailing addresses, email addresses and telephone numbers of any such persons from whom they received such funds from January 2005 to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from pool participants, including salaries, commissions,

fees, loans and other disbursements of money and property of any kind, from January 2005 to and including the date of such accounting;

C. Enter an order of permanent injunction enjoining Defendants and all persons insofar as they are acting in the capacity of Defendants' agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. engaging in conduct in violation of Sections 4b(a)(2)(A), (B) and (C), as amended, to be codified at 7 U.S.C. §§ 6b(a)(2)(A), (B) and (C) ;
2. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, as amended, to be codified at 7 U.S.C. § 1a(40);
3. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1)) (2010) ("commodity options"), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) ("forex contracts") for any personal or proprietary account or for any account in which they have a direct or indirect interest;
4. having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;
5. controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, and/or forex contracts;

6. soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;

7. applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010); and

8. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a)(2010)), agent or any other officer or employee of any person (as that term is defined in Section 1a(28) of the Act, as amended, to be codified at 7 U.S.C. § 1a(28)) registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010);

D. Enter an order requiring Defendants to disgorge to any officer appointed or directed by the Court or directly to the pool participants all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre- and post-judgment interest;

E. Enter an order directing Defendants and any successors thereof to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the customers whose funds were received by them as a result of the acts and practices which constituted violations of the Act as described herein;

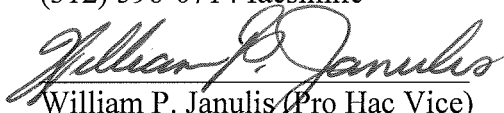
F. Enter an order directing Defendants to make full restitution to every person or entity whose funds Defendants received or caused another person or entity to receive as a result of acts and practices that constituted violations of the Act, as described herein, plus pre- and post-judgment interest thereon from the date of such violations;

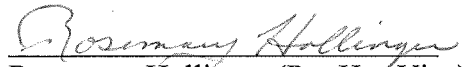
G. Enter an order directing the Defendants to pay a civil monetary penalty in amounts of not more than the greater of (1) triple the monetary gain to Defendants for each violation of the Act or (2) \$130,000 for each violation of the Act from October 23, 2004 through October 22, 2008, and/or \$140,000 for each violation of the Act on or after October 23, 2008, plus pre- and post-judgment interest thereon from the date of such violations; and

H. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006).

Respectfully submitted,  
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Dated: November 30, 2010

  
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