

United States Courts
 Southern District of Texas
 FILED

**UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF TEXAS** *September 24, 2020*
HOUSTON DIVISION

David J. Bradley, Clerk of Court

		20-3317	
COMMODITY FUTURES TRADING)		
COMMISSION,)	Case No. ____	
)		
Plaintiff,)	COMPLAINT FOR INJUNCTIVE	
)	AND OTHER EQUITABLE RELIEF	
v.)	AND FOR CIVIL MONETARY	
)	PENALTIES UNDER THE	
LAINO GROUP LIMITED D/B/A)	COMMODITY EXCHANGE ACT	
PAXFOREX)		
)	JURY TRIAL DEMANDED	
Defendant.)		
)		

I. SUMMARY

1. Defendant Laino Group Limited d/b/a PaxForex (“PaxForex”) operates a website and trading platform, www.paxforex.com, which allows customers to trade commodities ranging from foreign currencies and precious metals to certain digital assets including ether, litecoin, and bitcoin. The problem with Defendant’s business is that it is illegally soliciting or accepting orders for leveraged, margined or financed retail off-exchange foreign currency (“forex”), precious metals, and digital asset transactions from U.S. customers without being registered with Plaintiff Commodity Futures Trading Commission (“Commission”), as required.

2. From at least March 2018 through the present (the “Relevant Period”), Defendant, through the actions of its officers, employees, and/or agents, has conducted a business in the United States in a manner that violates Section 4(a) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6(a) (2018): by soliciting or accepting orders from non-eligible contract participants (“non-ECs”), not conducted on or subject to the rules of any Commission-regulated exchange, for the purchase or sale of gold, silver (together, “precious metals”), ether, litecoin, and bitcoin

(collectively, “digital assets”) on a leveraged, margined or financed basis that does not result in actual delivery of the commodities to the customer (“retail commodity transactions”).

3. Further, without registering with the Commission as a futures commission merchant (“FCM”), Defendant, in or in connection with forex and retail commodity transactions, accepts money, securities, or property (or extends credit in lieu thereof) in the form of bitcoin or other assets, to margin, guarantee, or secure trades or contracts that result or may result therefrom, in violation of Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2018).

4. Pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), the Commission brings this action to enjoin Defendant’s unlawful acts and practices, to compel compliance with the Act, and to further enjoin Defendant from engaging in any commodity-related activity.

5. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including but not limited to, trading and registration bans, disgorgement, restitution, rescission, pre-judgment and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

6. Unless restrained and enjoined by this Court, Defendant is likely to continue to engage in the acts and practices alleged in this Complaint, or similar acts and practices, as more fully described below.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (2018) (federal question jurisdiction) and 28 U.S.C. § 1345 (2018), which provides that district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress. In addition, Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), provides that district courts have jurisdiction to hear actions brought by the

Commission for injunctive relief and to enforce compliance with the Act whenever it shall appear to the Commission that any 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 thereunder.

8. The Commission has jurisdiction over the conduct and transactions at issue in this case pursuant to Sections 2(c)(2)(C) and 2(c)(2)(D) of the Act, 7 U.S.C. §§ 2(c)(2)(C), 2(c)(2)(D) (2018).

9. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(a) because Defendant transacts business in this District and certain transactions, acts, practices, and courses of business alleged in this Complaint occurred, are occurring, and/or are about to occur within this District.

III. PARTIES

A. Plaintiff

10. Commodity Futures Trading Commission is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1-26 (2018), and the Commission's Regulations ("Regulations") promulgated thereunder, 17 C.F.R. pts. 1-190 (2019).

B. Defendant

11. Defendant Laino Group Limited d/b/a PaxForex is registered as an international business company in Saint Vincent and the Grenadines and claims on its website that its information technology infrastructure has been deployed to data centers in New York and London. PaxForex operates an online trading platform accessed through www.paxforex.com, which offers customers forex and retail commodity transactions, among other products. PaxForex has never been registered with the Commission in any capacity.

IV. STATUTORY BACKGROUND

A. Forex Transactions

12. Section 2(c)(2)(C)(i)(I) of the Act, 7 U.S.C. § 2(c)(2)(C)(i)(I) (2018), in relevant part, applies to any agreement, contract, or transaction, in foreign currency that is offered to, or entered into with, a person that is not an ECP “on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis” (“forex transactions”), subject to certain exceptions not applicable here.

13. The Act defines an ECP, in relevant part, as an individual: (a) who has amounts invested on a discretionary basis, the aggregate of which exceeds \$10 million, or (b) \$5 million if the individual enters into 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.” Section 1a(18)(A)(xi) of the Act, 7 U.S.C. § 1a(18)(A)(xi) (2018).

14. For corporate entities, the Act defines an ECP, in relevant part, as a corporation that has total assets exceeding \$10 million and “the obligations of which under an agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit” Section 1a(18)(A)(v) of the Act, 7 U.S.C. § 1a(18)(A)(v) (2018). Alternatively, the Act provides that an ECP may be a corporate entity with a net worth exceeding \$1 million that “enters into an agreement . . . in connection with the conduct of the entity’s business or to manage the risk . . . reasonably likely to be . . . incurred by the entity in the conduct of . . . [its] business.” 7 U.S.C. § 1a(18)(A)(v) (2018).

B. Prohibition Against Unlawful Retail Commodity Transactions

15. Section 2(c)(2)(D)(i) of the Act, 7 U.S.C. § 2(c)(2)(D)(i) (2018), applies to “any agreement, contract, or transaction in any commodity” that is entered into with, or offered to

(even if not entered into with), a non-ECP—i.e., a person who is a retail customer—“on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis” (the aforementioned “retail commodity transactions”), subject to certain exceptions not applicable here.

16. Section 2(c)(2)(D)(iii) of the Act, 7 U.S.C. § 2(c)(2)(D)(iii) (2018), is an enabling provision, making Section 4(a) of the Act, 7 U.S.C. § 6(a) (2018), applicable to retail commodity transactions “as if” such transactions are contracts of sale of a commodity for future delivery.

17. In relevant part, 7 U.S.C. § 6(a) makes it unlawful for any person to offer to enter into, enter into, execute, confirm the execution of, or conduct any office or business anywhere in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery unless the transaction is conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market.

C. Prohibition Against Unregistered FCMs

18. Section 1a(28)(A) of the Act, 7 U.S.C. § 1a(28)(A) (2018), defines an FCM in relevant part as “an individual, association, partnership, corporation, or trust . . . engaged in soliciting or in accepting orders for . . . any agreement, contract, or transaction described in . . . section 2(c)(2)(C)(i) [of the Act, i.e. “forex transactions”] and section 2(c)(2)(D)(i) [of the Act, i.e. “retail commodity transactions”],” or “acting as a counterparty in any agreement, contract, or transaction described in section 2(c)(2)(C)(i) [of the Act] or section 2(c)(2)(D)(i) [of the Act]; and, in connection with these activities “accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.”

19. Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2018), makes it unlawful for any person to act as an FCM unless such person is registered as such with the Commission.

V. FACTS

20. During the Relevant Period, Defendant operated an online trading platform (“platform”) accessed through its website, www.paxforex.com (“website”). Through its platform and website Defendant solicits or accepts orders from customers, including those in the United States, for transactions in “Contracts for Difference” (“CFDs”) referenced to the prices of commodities including certain foreign currencies, precious metals, and digital assets. Defendant also solicits customers through its PaxForex YouTube channel at www.youtube.com.

21. A CFD is generally an agreement to exchange the difference in value of an underlying asset, such as a commodity, between the time at which the CFD trading position (“position”) is established and the time at which it is terminated.

22. Foreign currencies, gold, silver, ether, litecoin, and bitcoin are “commodities” under Section 1a(9) of the Act, 7 U.S.C. § 1a(9) (2018).

23. CFD trading on the platform is settled in U.S. Dollars (“USD”) and bitcoin, among other assets.

24. Bitcoin, ether, and litecoin are digital representations of value that function as mediums of exchange, units of account, and/or stores of value, but that do not have legal tender status in any jurisdiction. Bitcoin and other virtual currencies are distinct from “real” currencies, which are the coin and paper money of the United States or another country that are designated as legal tender, circulate, and are customarily used and accepted as a medium of exchange in the country of issuance.

25. To begin trading or open a position on Defendant's platform, customers complete a brief registration process through www.paxforex.com. During the registration process, customers provide, among other information, their country, a physical address, email address, and phone number to which PaxForex sends email and text messages, respectively, for verification.

26. For entering personal information, Defendant provides customers with a drop down menu with an option of selecting the United States as the customer's country of residence as well as an American flag symbol that corresponds to the customer's area code and phone number.

27. After completing the registration process, U.S. customers deposit assets such as USD and bitcoin into an account or wallet controlled by PaxForex as margin or collateral for the customers' trades.

28. When a customer deposits bitcoin as collateral, Defendant credits the customer's trading account in USD in an amount that is purportedly equivalent to the market value of the bitcoin.

29. Trades on Defendant's platform are made using MetaTrader ("MT") trading platform software, which U.S. customers can download from Defendant's website onto their desktop or mobile devices. For trading foreign currencies, MT presents customers with currency pairs such as the Euro/USD (EUR/USD) and Australian Dollar/USD (AUD/USD) in which the first currency is the currency being "bought" or "sold," and the second currency is the currency in which the buy or sell price is quoted.

30. Similarly, for trading digital assets, the platform's MT presents customers with pairs including ether/USD (ETH/USD), litecoin/USD (LTC/USD), and bitcoin/USD

(BTC/USD). As is the case with trading foreign currencies on Defendant's platform, the first asset is the asset being "bought" or "sold" with the price quoted in the second asset, USD.

31. Using MT on Defendant's platform, U.S. customers can either buy or sell CFDs (go "long" or "short") referenced to the prices of foreign currencies, precious metals, and digital assets on margin with leverages potentially as high as 1/500.

32. In this case, "margin" means the assets a customer deposits with the Defendant as collateral, while "leverage" allows a customer to control a large amount of a commodity with a comparatively small amount of margin. Leverage also allows customers to significantly magnify profits or losses with a relatively small investment.

33. In taking trading positions on Defendant's platform, U.S. customers speculate on the price movement of the underlying commodity and either profit or lose based on whether prices move in their favor or not. There is no actual delivery of the underlying commodity and customers close their positions by trading equal and opposite positions. Defendant automatically closes customers' positions when their losses reduce the value of assets they have deposited to equal to or less than five percent of the value of their open positions.

34. When one of Defendant's agents was contacted by an individual who identified himself as a U.S. customer, Defendant's agent actively solicited that individual in this District by email, and by phone through a U.S. phone number, to transact in CFDs referenced to the prices of foreign currencies, precious metals, and digital assets on Defendant's platform.

35. Defendant subsequently accepted orders placed by this U.S. individual on its platform, from this District, and executed transactions, on a leveraged or margined basis using bitcoin as collateral margin, in CFDs referencing the price of commodities. In these CFD transactions, Defendant acted as the counterparty.

36. Defendant uses its YouTube channel as a further means of soliciting U.S. customers. It does this through a promotional video that instructs customers on how to open a trading account and by providing an “Open Trading Account” hyperlink to PaxForex’s website.

37. PaxForex’s YouTube channel, along with PaxForex’s website, also contains daily videos, narrated by one of Defendant’s agents, which promote Defendant’s forecasts and recommendations for making trades in specific commodities, and periodic videos that tout the purported profitability of Defendant’s earlier trading recommendations and associated forecasts.

38. Additionally, in a blogpost on its website, Defendant touts itself as “The Best Forex Broker for Beginners in the USA.”

39. Similarly, Defendant’s website contains customer testimonials from two U.S. customers, one of whom the website identifies as being from the United States, and further purports to have a U.S. presence with its “IT Infrastructures [which] has been deployed within industry leading datacenters in London . . . and New York.”

40. Finally, Defendant solicits customers, including those in the United States, through its “Affiliate” program. Through this program, Defendant incentivizes U.S. persons to become “affiliates” by providing them with commissions and other incentives to solicit customers to trade CFDs in forex and other commodities on Defendant’s platform.

41. Defendant fails to check the ECP status of its customers during the customer registration process. Moreover, Defendant solicits customers to open an account with an initial deposit of as little as the equivalent of \$10 to incentivize trading by retail customers who would not qualify as ECPs.

42. Through the above-described conduct, Defendant offers to enter into, or enters into, and/or executes leveraged, margined or financed transactions in foreign currencies, precious metals, and digital assets with non-ECP customers in the United States.

43. Defendant's platform is not a designated contract market or derivatives transaction execution facility, exempt board of trade, or a bona fide foreign board of trade as those terms are defined in the Act. Indeed in the "Terms and Conditions of business PaxForex MT4," which Defendant provides to customers, Defendant acknowledges that its platform is "the sole Execution Venue [for customers' orders and trades] which is a nonregulated market."

44. As of the date of the filing of this Complaint, PaxForex has not been registered with the Commission as an FCM.

VI. STATUTORY VIOLATIONS

COUNT I

ILLEGAL OFF-EXCHANGE TRANSACTIONS

Violations of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2018)

45. Paragraphs 1 through 44 of this Complaint are re-alleged and incorporated herein by reference.

46. During the Relevant Period, the retail commodity transactions described in this Complaint, and as described in Section 2(c)(2)(D) of the Act, 7 U.S.C. § 2(c)(2)(D) (2018), were offered or entered into by Defendant: (a) on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis; (b) with U.S. persons who are not ECPs or eligible commercial entities as defined by Sections 1a(17) and 1a(18) of the Act, 7 U.S.C. §§ 1a(17), 1a(18) (2018); and (c) without being made or conducted on, or subject to, the rules of any board of trade, exchange, or contract market.

47. Pursuant to 7 U.S.C. § 2(c)(2)(D)(iii) (2018), the retail commodity transactions in gold, silver, ether, litecoin, and bitcoin alleged herein are subject to Section 4(a) of the Act, 7 U.S.C. § 6(a) (2018), as if they are contracts of sale of a commodity for future delivery.

48. During the Relevant Period, Defendant violated 7 U.S.C. § 6(a) by: (a) offering to enter into, entering into, executing, confirming the execution of, or conducting an office or business in the United States for the purpose of soliciting or accepting orders for, or otherwise dealing in, any transaction in, or in connection with, retail commodity transactions in gold, silver, ether, litecoin, and bitcoin; and (b) not conducting such transactions on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction facility for such commodities.

49. The acts and omissions of PaxForex's officers, employees, and/or agents acting for PaxForex described in this Complaint were done within the scope of their office, employment, and/or agency with PaxForex. Therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2018), and Regulation 1.2, 17 C.F.R. § 1.2 (2019), PaxForex is liable as a principal for each act, omission, or failure of its officers, employees, and/or agents acting for PaxForex, constituting violations of 7 U.S.C. § 6(a).

50. Each act in violation of 7 U.S.C. § 6(a) including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation.

COUNT II
FAILURE TO REGISTER AS AN FCM
Violations of Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2018)

51. Paragraphs 1 through 50 of this Complaint are re-alleged and incorporated herein by reference.

52. The leveraged, margined or financed transactions in forex such as EUR/USD and AUD/USD offered by Defendant to non-ECP U.S. customers constitute retail forex transactions under Section 2(c)(2)(C)(i) of the Act, 7 U.S.C. § 2(c)(2)(C)(i) (2018).

53. The leveraged, margined or financed transactions in gold, silver, ether, litecoin, and bitcoin offered by Defendant to non-ECP U.S. customers constitute retail commodity transactions under 7 U.S.C. § 2(c)(2)(D)(i).

54. 7 U.S.C. § 6d(a)(1) (2018), provides that it shall be unlawful for any person to be an FCM unless such person is registered with the Commission as an FCM.

55. During the Relevant Period, PaxForex acted as an FCM by: (a) soliciting or accepting orders for retail forex transactions as described by 7 U.S.C. § 2(c)(2)(C)(i), and retail commodity transactions as described by 7 U.S.C. § 2(c)(2)(D)(i); or (b) acting as a counterparty for retail forex transactions as described by 7 U.S.C. § 2(c)(2)(C)(i) or retail commodity transactions as described by 7 U.S.C. § 2(c)(2)(D)(i); and, (c) in connection with these activities, accepting money, securities, or property (or extending credit in lieu thereof) to margin trades or contracts that result or may result therefrom, and failed to register with the Commission as an FCM, and therefore violated 7 U.S.C. § 6d(a)(1).

56. The acts and omissions of PaxForex's officers, employees, and/or agents acting for PaxForex described in this Complaint were done within the scope of their office, employment, and/or agency with PaxForex. Therefore, pursuant to 7 U.S.C. § 2(a)(1)(B), and 17 C.F.R. § 1.2, PaxForex is liable as a principal for each act, omission, or failure of its officers, employees, and/or agents acting for PaxForex, constituting violations of 7 U.S.C. § 6d(a)(1).

57. Each act in violation of 7 U.S.C. § 6d(a)(1) including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation.

VII. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), and pursuant to its own equitable powers, enter:

- A. An order finding that Defendant violated Sections 4(a) and 4d(a)(1) of the Act, 7 U.S.C. §§ 6(a), 6d(a)(1) (2018);
- B. An order of permanent injunction enjoining Defendant and any other person or entity associated with it, including but not limited to affiliates, agents, servants, employees, assigns, attorneys, and all persons in active concert or participation with Defendant, including any successor thereof, from:
 - (1) Engaging, directly or indirectly, in conduct in violation of 7 U.S.C. §§ 6(a), 6d(a)(1);
 - (2) Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2018));
 - (3) Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2019)), for its own account(s) or for any account in which Defendant has a direct or indirect interest;
 - (4) Having any commodity interests traded on Defendant’s 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 interests;
 - (6) Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;

- (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) (2019); and/or
 - (8) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2019)), agent, or any other officer or employee of any person (as that term is defined in 7 U.S.C. § 1a(38) (2018)), registered, exempted from registration, or required to be registered with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9)).
- C. An order directing Defendant to pay a civil monetary penalty for each violation of the Act of not more than the amount set forth by Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1) (2018), as adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, 129 Stat. 584 (2015), title VII, Section 701, and promulgated in Regulation 143.8, 17 C.F.R. § 143.8 (2019), plus post-judgment interest;
- D. An order directing Defendant, as well as any successor thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received including, but not limited to, trading profits, revenues, salaries, commissions, fees, or loans derived directly or indirectly from acts or practices which constitute violations of the Act, as described herein, and pre- and post-judgment interest thereon from the date of such violations;
- E. An order directing Defendant, as well as any successor thereof, to make full restitution, pursuant to such procedure as the Court may order, to every customer

whose funds Defendant received, or caused another person or entity to receive, as a result of the acts and practices constituting violations of the Act, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

- F. An order directing Defendant, as well as any successor thereof, to rescind, pursuant to such procedure as the Court may order, all contracts and agreements, whether express or implied, entered into between or with Defendant and any customer whose funds were received by Defendant as a result of the acts and practices which constituted violations of the Act, as described herein;
- G. An order directing that Defendant, and any successor thereof, make an accounting to the Court of all of its assets and liabilities, together with all funds it received from and paid to customers and other persons in connection with commodity transactions and all disbursements for any purpose whatsoever of funds received from commodity transactions, including salaries, commissions, interest, fees, loans, and other disbursement of money or property of any kind from at least the beginning of the Relevant Period to the date of such accounting;
- H. An order requiring Defendant and any successor thereof to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2018); and
- I. An order providing such other and further relief as the Court deems proper.

Dated: September 25, 2020

Respectfully submitted,

s/ Harry E. Wedewer

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