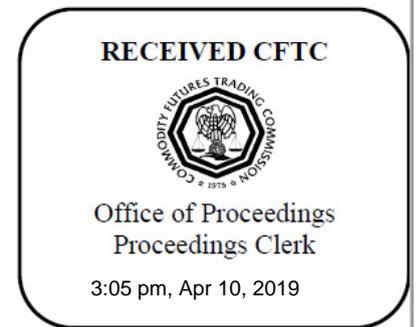




**U.S. COMMODITY FUTURES TRADING COMMISSION**

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
[www.cftc.gov](http://www.cftc.gov)

Office of Proceedings



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NEA LATIF,  
Complainant,

v.

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INTERBANK FX LLC,  
d/b/a IBFX.COM,  
Respondent.  
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CFTC Docket No. 14-RO11  
Served electronically

**INITIAL DECISION AND  
ORDER GRANTING  
RESPONDENT'S MOTION  
FOR SUMMARY DISPOSITION**

Nea Latif, appearing in this forum *pro se* and by way of formal proceeding, seeks \$51,310.90 in damages purportedly caused when IBFX<sup>1</sup> allowed a third party, Ben Noble Zion, to access and place unauthorized trades in her self-directed trading account. Compl. (Aug. 16, 2014). IBFX contends that if a third party accessed Latif's account, he or she did so without IBFX's actual or constructive knowledge, and Latif failed to inform IBFX of the alleged breach and unauthorized trades.

IBFX filed its Motion for Summary Disposition on October 26, 2015, stating that Latif's claims are barred by the statute of limitations and estoppel. Latif filed

<sup>1</sup> Although Latif's account was held by a single registered foreign exchange dealer, the dealer went through a variety of corporate and name changes. *See infra* at 2-3. For the sake of brevity, Respondent is collectively referred to as "IBFX" or "Respondent" throughout this Order. *See* Ans. & Affirmative Defenses at n.1.

a Motion in Opposition to Summary Disposition on December 29, 2015, arguing that her Complaint was timely, and IBFX should have implemented security protocols to ensure Latif's account could not be accessed by anyone other than her. In accordance with former Judgment Officer (JO) McGuire's Order, dated November 23, 2015, both parties filed supplemental memoranda of law regarding these summary disposition positions on January 20, 2016. Briefing for the parties' Motions is complete and the case is ready for decision.

## I. Summary of Parties and Proceedings

### A. The Parties

Complainant Nea Latif, a resident of Atlanta, Georgia, opened a self-directed forex trading account with IBFX on July 9, 2011. Ans. & Aff. Defenses at 3. At that time, Latif was employed by U-Haul International and had one-year of experience trading forex. Ans. & Aff. Defenses at 2 (March 17, 2015); IBFX000001; Compl. Addendum at Ex. 2. Latif funded her account with \$20,000 on July 18, 2011. Compl. at 1; Ans. & Aff. Defenses at 5. Her account balance decreased to \$15.40 in July 2013, at which time it lay dormant through at least the time she filed her Complaint on August 16, 2014. *Id.*; IBFX000031-IBFX000033.

Respondent Interbank FX LLC d/b/a IBFX.com, the dealer with which Latif initially opened her self-directed account, was a CFTC-registered foreign exchange dealer from September 21, 2010 through October 17, 2013. *See* NFA Basic research, *available at* <https://www.nfa.futures.org/basicnet/Details.basicnet/Details.aspx?entityid=5iQcIIQr4ds%3d&rn=Y>. On or about December

2011, Interbank acquired TradeStation Group, Inc. (TSG), and during that same time transferred Latif's account to TradeStation Forex, Inc., TSG's subsidiary company. Ans. & Aff. Defenses at 2. After its acquisition, Interbank renamed its subsidiary to IBFX, Inc. (IBFX). *Id.*

IBFX was a CFTC-registered Foreign Exchange Dealer and NFA member from January 25, 2011 through March 2016. NFA Basic research, *available at* <https://www.nfa.futures.org/basicnet/Details.aspx?entityid=cGKddvfqsJg%3d&rn=Y>. During the relevant time, IBFX offered its clients the ability to trade retail forex via the MT4 platform. Ans. & Aff. Defenses at 3. This is the same platform through which Latif traded. *Id.*

Non-Party Ben Zion Noble is a third party who purportedly trained Latif's parents on currency trading so that her parents could teach Latif at a later date. *See* Complainant's Response to Aug. 10, 2015 Order at 1 (Aug. 31, 2015). He allegedly trained them with "read only" access to Latif's account, and he was supposed to be without the ability to effectuate live trades. Compl. He was paid \$7,000 for his services through Latif's self-directed forex account in December 2011. Complainant's Response to Aug. 10, 2015 Order (Aug. 31, 2015). Latif alleges that Zion accessed her forex account without authorization in and around July 2011 through July 2013, and placed trades without her consent, causing her \$51,310.90 in damages. *See* Compl; Compl. Addendum.

#### B. Procedural History

On August 16, 2014, Latif and her mother, Diana Wilson, filed this reparations complaint. Compl. On September 5, 2014, this Office sent Latif and

Wilson a Deficiency Letter, stating they would need evidence that both Latif and her mother were owners of the account if they wanted to be listed as co-complainants. *See* Deficiency Letter from Complaint Specialist to Latif and Wilson (Sept. 5, 2014). Latif removed her mother as a co-complainant, among making other clarifications to her original Complaint, in a Complaint Addendum filed on September 18, 2014. Respondent was served with the Complaint on November 03, 2014, and filed its Answer on March 17, 2015.<sup>2</sup> Discovery began on March 27, 2015, and several issues arose during this discovery period.

First, on July 21, 2015, this Office informed Latif that she must cease allowing “Mr. Wilson[, her father,] or any other non-attorney, to file any submissions on [her] behalf.” *See* Office of Proceedings Email to Latif (Jul. 21, 2015). This is relevant insofar as Latif has a history of conflating her parents’ actions with her own. *See passim*.

Second, Latif filed a Motion to Compel Discovery due to her dissatisfaction with IBFX’s discovery responses. *See* Complainant’s Motion to Compel Discovery (July 26, 2015); *see also* Latif Letter (July 30, 2015). Essentially she wanted information from her own ISP regarding transactions placed from her personal computer, but IBFX responded that it had supplied her with all documents “in its possession, custody and control relating to her IBFX account.” Respondent’s

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<sup>2</sup> IBFX filed its Answer after JO McGuire originally found Respondent in default. Default Notice (Feb. 2, 2015). IBFX filed its Motion to Set Aside Default on February 25, 2015, claiming the Complaint was improperly served and sent to Interbank’s old address registered with NFA, in Salt Lake City, Utah. Motion to Set Aside Default at 2. After briefing on the issue, JO McGuire vacated the Default Order and allowed IBFX to file its Answer.

Opposition to Motion to Compel at 1-2 (Aug. 6, 2015). JO McGuire denied Latif's Motion to Compel on October 6, 2015. Order at 1 (Oct. 6, 2015).

Third, the facts regarding Latif's discovery of the unauthorized trading were unclear and JO McGuire issued a series of discovery orders designed to clarify those facts. For example, Latif was required to produce a signed and sworn statement stating "how and when (*i.e.*, date or approximate date) [she] suspected that a third party was executing actual trades in [her] account." Order (July 30, 2015). She did so on August 10, 2015, stating that "[o]n or about the date of 07/29/2013, I first observed that the funds which I had deposited in my account which was with the trading concern of IBFX, Inc. had been withdrawn from a balance of approximately \$53,000 to a sum of approximately \$1500." *See* Complainant's Response to July 30 Order (Aug. 10, 2015).

On August 10, 2015, both parties were ordered to answer additional questions and produce further documents. Order (Aug. 10, 2015). In particular, JO McGuire was interested in reviewing any emails between the parties during the relevant time period, and uncovering how Latif was monitoring her account, why she deposited money into her account in 2011 and 2012, how she came to suspect that her account was being traded by someone else, and how Zion was being compensated for his services. *Id.* at 1. Both parties complied with the Order.

Complainant's Response to Aug. 10 Order (Aug. 31, 2015); Respondent's Response to Aug. 10 Order (Aug. 31, 2015).<sup>3</sup>

Having concluded discovery, on October 6, 2015, the parties were directed to present their views on whether this case should be resolved by summary disposition, an oral hearing, or no oral hearing. Order (Oct. 6, 2015). On October 26, 2015, IBFX filed its submission in accordance with the October 6 Order, and stated that this matter should be "summarily dismissed because Latif's complaint is clearly time-barred by the two year statute of limitations." Respondent's Response to October 6, 2015 Order at 1 (Oct. 26, 2015) (hereafter Respondent's Motion for Summary Disposition). Respondent's Motion for Summary Disposition also argued that estoppel barred recovery in her case. *Id.* at 6-7; Answer at 8 (Aff. Defenses ¶ 2) (March 17, 2015). Latif disagreed that her claims were barred, but agreed that an oral hearing was unnecessary. Complainant's Response to Oct. 6, 2015 Order (Oct. 26, 2015).

On November 23, 2015, JO McGuire directed Latif to file a legal argument in opposition to IBFX's Motion for Summary Disposition, and IBFX to submit its brief in support of its Motion. Order (Nov. 23, 2015), attached here at Appendix A. In that Order, JO McGuire found, among other things, that further factual development would be unlikely to clarify the two primary issues raised in

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<sup>3</sup> On September 1, 2015, unsatisfied with Latif's responses to his August 10 Order, JO McGuire ordered Latif to produce more definite responses. Order (Sept. 1, 2015). She produced additional responses on September 28, 2015.

Respondent's Motion for Summary Disposition—that Latif's Complaint here is untimely and that in any event, the doctrine of estoppel bars any recovery.

In response to that Order, Latif filed a submission titled "Complainant's Request to JO McGuire" asking that she be permitted to withdraw her former conclusion that oral hearing was unnecessary. Although she was permitted to supplement her reasons for the request, JO McGuire treated her request as a motion to reconsider his November 23, 2015 Order and denied that motion. Order (Jan. 4, 2016). Briefing on IBFX's Motion for Summary Disposition was completed on January 20, 2016.<sup>4</sup>

## II. Factual Allegations and Findings

### A. Account Opening and the Customer Agreement

On July 9, 2011, Latif opened a self-directed forex trading account with Interbank. Answer & Aff. Def. at 2 (Mar. 17, 2015); IBFX000001. She funded her account with \$20,000 upon opening, later adding \$28,919 on January 30, 2012. IBFX000070. The Customer Agreement she signed when opening her account included language concerning the account owner's responsibility to protect her logon credentials:

I/we shall be the only authorized user of the Service under this Agreement. I/we shall be responsible for the confidentiality and use of my/our User ID, sign-on password, and PIN number. I/we understand that I/we shall be solely responsible for all orders entered through the Service using my/our User ID, sign-on password, and PIN Number. I/we further understand and agree that, as a condition of using the

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<sup>4</sup> This matter was reassigned to my docket on July 27, 2017, and I was formally appointed by the Commission as its Judgment Officer on April 9, 2018. *See* Notice of Appointment (Apr. 19, 2018).

Service to place orders and send/receive information, I/we accept full responsibility for the monitoring of my/our account, and that I/we shall immediately notify Interbank FX, LLC if: . . . (d) I/we become aware of any unauthorized use of my/our User ID, sign-on password, or PIN number. . . If I/we fail to notify Interbank FX, LLC as soon as practicable when any of the above conditions occur, neither Interbank FX, LLC, nor any of its officers, employees, agents, affiliates or subsidiaries can or will have any responsibility or liability to me/us or to any other person whose claim may arise through me/us for any claims with respect to the handling, mishandling, or loss of any order.

IBFX000006-IBFX000007 (Electronic Customer Trading Agreement (July 9, 2011))  
(emphasis added).

When filling out the Customer Agreement, Latif left two boxes unchecked that requested whether anyone else would have any interest in the account. The first question asked “will any other person or entity have a financial interest in this account?” The second question asked “will any other person or entity control or manage trading in this account?” IBFX000002. Neither question was verified by Latif. The Customer Agreement also included a portion in connection with the receipt and review of account statements, which were accessible through customer logins. *See* IBFX000005 (The Customer Letter at 5); IBFX000008-IBFX000019 (Trading Agreement at 6, 9); Respondent’s Response to Sept. 3, 2015 Order at 1-2 (Sept. 9, 2015); Respondent’s Compliance with Aug. 10, 2015 Order at 1-2 (Aug. 19, 2015).

Latif claims that “the account [was opened] and funded for future use.” Compl. Addendum at 1. In the interim, Latif’s parents attended teleconferences where they were taught about “currency trading principals, techniques chart reading and timing,” which they would use to trade forex in Latif’s account.

Complainant's Response to Aug. 10, 2015 Order at 4 (Aug. 31, 2015). This training purportedly came from Zion and his company, Ben Noble Trading Academy. *Id.* Compl.; Compl. Addendum. Latif's allegations with respect to how this training occurred are inconsistent. Latif initially alleges in her Complaint that Zion was supposed to have read-only access to her account, and would train her parents in this simulated environment. Compl. Narrative at 1. But then she alleges that Zion "was an observer in [her] non funded account." Compl. Response to Oct. 6, 2015 Order (Oct. 26, 2015). She does not provide any relevant details for either inconsistent allegation, like how Zion obtained read-only access to her account, what the account number was for her purported unfunded account, or how Zion was able to access the purported unfunded account.<sup>5</sup>

However the mechanics of the actual training worked, Latif claims that her parents training course was completed sometime before July 29, 2013.

Complainant's Response to Aug. 10, 2015 Order at 1 (Aug. 31, 2015). Latif asserts that on July 29, 2013, she accessed her account for the first time in order to have her mother train her using what she learned from Zion, and Latif realized, for the first time, that someone else (Zion) had accessed her account without permission and placed a number of unauthorized trades. *Id.* She thus alleges that IBFX

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<sup>5</sup> Latif does allege at one point during these proceedings that her "Mother did in fact have her own practice account as [Latif has] her own account." Complainant Response to Sept. 1, 2015 Order at 5 (Sept. 26, 2015). But it is unclear whether her mother's account is the unfunded account in which Zion practiced, or whether Latif herself had an unfunded practice account.

violated the law when it allowed Zion to “raid” her account due to some “defect” in IBFX’s system. Compl. Narrative at 1.

Latif also claims that from July 2011 through July 2013, she neither checked her account nor placed any trades. Complainant’s Response to Aug. 10, 2015 Order at 2 (Aug. 31, 2015) (“I was not involved in any trades.”). She reiterates this allegation by claiming she “HAD NEVER EXECUTED ANY TRADES IN THIS ACCOUNT.” Compl. Addendum at 1 (capitalization in original).

These claims are squarely and thoroughly discredited by the evidentiary record. The account, from its inception in July 2011 and through July 2013, reflected 2,448 total trades, only 233 of which Latif alleges were unauthorized. Answer & Aff. Defense at 7; IBFX000043-IBFX000128; Compl. Addendum at 1. Latif’s account balance fluctuated over time with periods of sharp declines. For example, she began with a balance of \$20,000 in July 2011; it was \$9,928.22 in December 2011, IBFX000064-IBFX000066; and increased to \$45,479.46 in January 2012, which reached that level because Latif herself placed \$28,919 in her account on January 31, 2012. IBFX000070. She was plainly in a position to notice these fluctuations. Not only did she fund her account during this time, she admits to accessing her account “roughly once a month or every 4 weeks.” Complainant’s Sept. 26, 2015 Production at 3.

Latif’s account not only experienced active trading and additional funding by Latif herself, she communicated with IBFX regarding trading problems in her account during this time. For example:

On October 14, 2011, Latif claimed she could not close trades, “last night [I] was unable to get through to customer service in 10+ attempts” and asked IBFX “to credit back the entire loss on both trades.” IBFX000040.

On October 17, 2011, IBFX credited Latif’s account for two trades (the first for \$1,362.00 and the second for \$425.00) due to a “communication malfunction.” IBFX000040·IBFX000041; IBFX000057.

In October 2011, Latif received a promotional credit resulting from live trading in her account. IBFX000053. These credits are given only after the customer has made a certain number of live trades.

On November 25, 2011, Latif requested a \$7,826.53 withdrawal, purportedly to pay Zion for the forex trading training he provided Latif’s parents in Latif’s account with read only access. IBFX000039; Complainant’s Response to Aug. 10, 2015 Order at 4; Complaint Narrative at 1. However, on November 28, 2011 IBFX informed Latif that she was unable to withdraw that amount, because there were insufficient funds in her account due to open trades. *Id.* IBFX requested Latif verify her current account balance, excluding the open trades, and re-request her withdrawal for the proper amount. *Id.*

On November 30, 2011, Latif emailed IBFX customer service with a problem she had with her account. The email stated in pertinent part:

Greetings, I am Nea Latif, and I have an account with IBFX . . . You guys have had some issue with your servers & platforms. I greatly appreciate that you refunded my trades the time you had this issue on 10/14/2011 . . . however, for some strange reason this time, I’m not receiving the same quality of service. . . I had school and other motherly duties to prepare for, and at that time of morning I only had

a few hours left to rest. So, do the right thing IBFX, and retain a customer.

IBFX000038; Answer & Aff. Defenses at 6. While IBFX initially denied Latif's request for a trade credit, one was eventually issued on December 8, 2011 in the amount of \$2,181. IBFX000035; IBFX000066.

On December 2, 2011, \$7,730.53 was withdrawn from Latif's account, purportedly used to pay Zion for his training services. IBFX000066; Complainant's Response to Aug. 10, 2015 Order at 4 (Aug. 31, 2015). Latif suggests that her parents withdrew this money (and thus must have had access to her account) and that she was aware of these facts, stating that her "parents informed] her that [Zion] was compensated out of the \$7,000 withdrawn from the account to train them in currency trading." *Id.*

On January 19, 2012, Latif contacted IBFX and asked that her mother be added to her account, and requested a password reset. IBFX000035. IBFX instructed Latif to fill out and submit a Power of Attorney to authorize her mother to access the account, which Latif never submitted. *Id.*; Answer & Aff. Defenses at 7.

On January 30, 2012, Latif funded her account, for a second time since her account had been opened in July 2011, with \$28,919. IBFX000067-IBFX000070. This deposit occurred after Latif's account had lost more than half of her initial \$20,000 deposit. *Id.*

In April 2012, IBFX awarded Latif another promotional credit. IBFX000034; IBFX000081. Again, these promotions were only given to certain IBFX customers

that had completed a set amount of live trades. Respondent's Compliance with Oct. 6, 2015 Order at 6.

I find summary disposition dismissing this case is appropriate because Latif's allegations are unsupported by the record and there is no triable issue of fact. Even if they were supportable, her allegations would be both time-barred and barred by estoppel.

### III. Legal Analysis and Conclusions

Under Commission Rule 12.310(e), summary disposition is appropriate when each of three conditions has been met: (1) there is no genuine issue of material fact; (2) there is no need for further factual development; and (3) the moving party is entitled to a decision as a matter of law. *Elliot v. Jay De Bradley et al.*, CFTC No. 11-R004, 2012 WL 6087468 at \*6 (CFTC Dec. 5, 2012); *Levi-Zeligman v. Merrill Lynch Futures, Inc.*, CFTC No. 92-R125, 1994 WL 506234 at \*6 (CFTC Sept. 15, 1994). The purpose of summary disposition "is to avoid the empty ritual of an oral hearing," *Elliot*, 2012 WL 6087468 at \*6 (internal citation omitted), and at this stage:

[T]he judge's function is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial. All reasonable doubts about the facts should be resolved in favor of the non-moving party. If reasonable minds could differ on any inferences arising from undisputed facts, summary judgment should be denied.

*Id.* Further, Complainant must prove that a violation of the Commodity Exchange Act or any regulations passed pursuant to the act by a preponderance of the evidence. *Webster v. Refco, et al.*, CFTC Dkt. Nos. 98-R005, R009, R010, R075, 1999

WL 41818, at \*16 n.303 (CFTC Feb. 1, 1999). But under any standard of review, Latif's allegations are affirmatively disproved by the undisputed evidence in the record, obviating the need for a hearing.

Latif alleges that the unauthorized trades occurred before July 29, 2013 and were uncovered at that time. Compl.; Compl. Addendum; Complainant's Cross-Motion for Summ. Disp at 2 (Dec. 29, 2015). She further alleges that she was neither monitoring, nor trading in her account before that time, from July 2011 through July 2013. *Id.*

However, the undisputed facts demonstrate that these allegations are false. First, Latif admits she accessed her account at least once a month, or every four weeks. Complainant's Sept. 26, 2015 Production at 3. If that were true, she would have noticed that her account balance was declining and that someone was trading in her account. Second, Complainant herself lodged complaints on October 14, 2011 and November 20, 2011 and received almost \$4,000 in credits at that time. IBFX000039; IBFX000035. Third, Latif (or her parents) withdrew roughly \$7,700 in December 2011 to pay Mr. Zion for trading lessons. Fourth, Latif received promotional credits in October 2011 and April 2012 for making a certain number of live trades. Fifth, Latif herself funded her account with additional money in January 2012, after her account had lost almost half its initial investment made just six months before. IBFX000070. Finally, she alleges roughly 10% of the trades placed in her account were unauthorized. This amounts to an admission that she (or someone else, with her knowledge and consent) traded in her account the

remainder of the time. In other words, Complainant was both trading in and monitoring her trading when the unauthorized trading allegedly occurred, and her assertions that she was neither trading in her account nor in a position to notice the purportedly unauthorized trading until July 29, 2013 are disproven by the record.

Moreover, Complainant admits she shared access to her account, and thus she cannot show any trading done by someone other than herself was in fact unauthorized. There are three people other than herself who had access to her account (with Latif's knowledge and consent):

(1) Her Mother. Latif admits she "had given [her] mother access to the account," without advising IBFX that she had done so. Response to Sept. 1, 2015 Order at 5 (Sept. 26, 2015). She furthermore tried to formally add her mother as an account owner. Both these facts make clear that her mother had her login credentials. Complainant's Response to Respondent's Request for Admissions at 3 (May 26, 2015).

(2) Her Father. Latif likewise admits she gave her father access to her account. IBFX000033-35. And in fact, she sent an email to IBFX in August 2014 requesting that additional users be given access to her account. *Id.*

With regard to both her parents, Latif further admits that her parents gave her money to fund the account, Complainant's Response to Aug. 10, 2015 Order at 3 (Aug. 31, 2015); Complainant's Response to Sept. 1, 2015 Order at 4 (Sept. 28, 2015), and intended to trade in the account to train her, Respondent's Notice to Produce Docs. at 7 (Aug. 31, 2015); Complainant's Response to Aug. 10, 2015 Order

at 1 (Aug. 31, 2015). Latif also states that her parents withdrew the money from her account in December 2011 to pay Zion, further making clear that they both had her login credentials. Complainant's Response to Aug. 10, 2015 Order at 4 (Aug. 31, 2015).

In fact, the barrier between Latif's actions and those of her parents is thin at best, non-existent at worst. Not only did they fund and periodically access her account, it was they who first complained to IBFX about the purported unauthorized trading and they who tried to direct this litigation until they were stopped from doing so.

(3) Zion. Latif admits that her parents either provided "read-only" access to her account to Zion, Compl. Narrative at 1, or that she gave Zion access to an unfunded account, Compl. Response to Oct. 6, 2015 Order (Oct. 26, 2015). She never substantiates how either of these forms of access was granted. But it was clear that Zion, with the knowledge and authorization of Complainant and her parents, traded in some account—and the only account for which we have an account number and specific information is the account at issue.

Thus Complainant lost control of her account through her own unauthorized sharing of her login information, and it is impossible to know whether she, her mother, her father, or Zion (as she alleges) traded in her account without telling the others.<sup>6</sup> Either way, none of that trading was unauthorized on this record and there

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<sup>6</sup> Although I do not need to make a credibility finding in this case where the evidence is so clear, I find Latif not credible. Her assertions that she did not trade in her account (or was unaware of such trading), and that any access to her account must have been both unauthorized and attributed to IBFX's unlawful activity are thoroughly discredited by the

is no reason for IBFX to have known that three or four people had access to Latif's account when she never disclosed that fact. *See* Electronic Customer Trading Agreement IBFX000006-000007 (prohibiting customer from sharing access to her account). Her attempts to shift the blame on this loss of control to IBFX are unsupported on this record.<sup>7</sup>

Not only does the record discredit Latif's allegations, her claims are both time-barred and barred by equitable estoppel. In appropriate circumstances, statute of limitations issues may be resolved on a summary basis as long as there is no significant doubt as to whether the evidentiary record is sufficiently developed for reliable resolution of limitations-related issues. *Chaney v. Greco*, CFTC No. 05-R050, 2008 WL 420043 at \*3 (CFTC Feb. 12, 2008); *Stoffel v. Interstate/Johnson-Lane Corp.*, CFTC No. 94-R049, 1994 WL 673462 at \* 3 (CFTC Dec. 1, 1994).

A cause of action accrues, and the two-year limitations period under Section 14(a)(1) of the Commodity Exchange Act (CEA) begins to run, when a complainant discovers wrongful conduct resulting in monetary losses, or in the exercise of reasonable diligence, should have discovered the wrongful activity. 7 U.S.C.

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record. In addition, her attempts to substantiate her allegations have been both vague and inconsistent. Because of the deficits in her evidence, I find her not credible. *See Haekal v. Refco, Inc.*, CFTC No. 93-109, 2000 WL 1460078, at \*3 (CFTC Sept. 29, 2000) (authorizing credibility findings on the documentary record "when the documentary evidence is so convincing or persuasive that credibility can be readily determined without an oral hearing.").

<sup>7</sup> Latif argues that multiple logins from IP addresses that are not her own is proof that there was unauthorized trading in her account. Complainant's Response to Oct. 6, 2015 Order at 4 (Oct. 26, 2015). This data alone does not prove the logins were unauthorized, or importantly, that IBFX should have known they were unauthorized, because users are free to trade from whatever IP addresses they like.

§18(a)(1); *McGough v. Bradford, et al.*, CFTC No. 97-R116, 2000 WL 33675749 at \*13 (CFTC Sept. 28, 2000) (citing *Edwards v. Balfour Maclaine Futures, Inc.*, CFTC No. 93-R005, 1994 WL 267438 at \*1 (CFTC June 16, 1994)). The Commission looks to the particular facts and circumstances of each case, such as (1) the relationship of the parties; (2) the nature of the wrongful activity; (3) complainant's opportunity to discover the wrongful activity; and (4) the action taken by the parties subsequent to the wrongful activity. *Edwards*, 1994 WL 267438 at \*2.

Each of these four factors shows Complainant's claims accrued in 2011. First, in terms of the parties' relationship, IBFX and Latif had an agreement that Latif was to monitor her account, which as discussed above she did. Second, the nature of the wrongful activity—that is the unauthorized trading by an individual who was known to Latif but not to IBFX—was such that Latif herself was in the best position to uncover it. Third, and importantly, Latif had ample opportunity to uncover the unlawful activity. Latif was both accessing and monitoring her account from July 2011 through July 2013, during which the unauthorized trading occurred. She was also receiving monthly statements, *see, e.g.*, IBFX000043-128, which reflected large losses throughout the life of her account. IBFX000064-66. The Commission has routinely held that monthly account statements reflecting large losses are sufficient to put the complainant on notice that misconduct has occurred. *See, e.g., Elliot v. Jay De Bradley, et al.*, CFTC No. 11-R004, 2012 WL 6087468 at \*7 (CFTC Dec. 5, 2012); *Cavallaro v. Jackson et al.*, CFTC No. 06-R055, 2008 WL 1930919 at \*3 (CFTC Apr. 30, 2008); *Rosa v. Iowa Grain Co. et al.*, CFTC No. 00-

R020, 2000 WL 1466071 at \*5 (Sept. 29, 2000). Thus her time started running as early as October 2011, when she first complained about her account to IBFX, but certainly accrued no later than December 2011.<sup>8</sup> Both these dates make her August 2014 complaint untimely.<sup>9</sup> And finally, she completely failed to alert IBFX to the possibility that unlawful trading had occurred, allowing IBFX to fairly invoke the doctrine of equitable estoppel.

Latif is estopped from complaining about these losses. Although IBFX did not expressly make a reference to the term “estoppel” in its Affirmative Defenses, IBFX raised the essence of an estoppel defense—that is “Latif’s delay in revealing the purportedly unauthorized access to her account by a third party—who was known to her and her parents, but not to IBFX—unfairly prejudiced IBFX.” Order at 6 (Nov. 23, 2015), App. A. The Commission has held that “[b]y not complaining at the first reasonable opportunity, a customer, in effect, usurps the proper role of the persons ultimately responsible for the trade,” and allows the broker “to presume the regularity of the unprotested transactions.” *Sherwood v. Madda Trading Co.*,

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<sup>8</sup> Latif claims she was not aware of the trades until July 29, 2013, but the dispositive question is when she could have discovered those facts enabling her to detect a general illegal scheme. *See Fox v. First National Monetary Corp.*, CFTC No. 84-R431, 1986 WL 65776 at \*8 (CFTC June 12, 1986) (Initial Decision), *aff’d* 1987 WL 106864 at \*4. This detection point starts the clock running on the statute of limitations, and it could happen well before a complainant knows the full extent of her losses. *See Pon Lee v. Thomas John Lee, et al.*, CFTC No. 06-R054, 2007 WL 776613 at \*2 (CFTC Mar. 13, 2007) (holding that complainant need not flesh out details of malfeasance or available legal remedies before claim accrues).

<sup>9</sup> It does not matter that some of the alleged unauthorized trades occurred within the two year window that the Complaint was filed because the clock begins to run when the first alleged act occurred, not the last. *See, e.g., Martin v. Shearson Lehman/American Express*, CFTC No. 85-R72, 1986 WL 65939 (CFTC Nov. 12, 1986).

CFTC No. 77-2, 1979 WL 11487 at \*5 (CFTC Jan. 5, 1979). Moreover, in an unauthorized trading case, a customer without actual knowledge of the facts may still be estopped from recovering if her ignorance is the result of willful disregard of the facts or gross negligence. *Walton v. Heinold Commodities, Inc., et al.*, CFTC No. 82-R131, 1985 WL 56285 at \*3 (May 30, 1985).

According to her own allegations, she uncovered the unauthorized trades on July 29, 2013. But she did not inform IBFX of her suspicions at that time. In fact she never reached out to IBFX with her suspicions that unauthorized trading had occurred. Instead, her parents reached out to IBFX on July 30, 2014—one year after her discovery and three weeks before the Complaint was filed—complaining about fraud. Respondent’s Supplemental Brief in Support of Summary Judgment at 3-4 (Jan. 20, 2016); IBFX000031-IBFX000033. This pattern of inaction occurred despite the fact that she was under an obligation to inform IBFX of any trading discrepancies as she became aware of them, IBFX000010 (Trading Agreement) (emphasis added), and of any unauthorized trading, IBFX000006-IBFX000007 (Electronic Customer Trading Agreement (July 9, 2011)).

In essence she never gave IBFX the opportunity to remedy the purportedly unauthorized trades, nor did she alert them to the fact that they might be occurring, so that IBFX could have worked with her to stop the bleed. Instead, she waited until she had nearly a zero balance before bringing claims against IBFX—well after she alleges she discovered the fraud (July 29, 2013), and even later after she certainly should have known (December 2011). Having failed to timely inform

IBFX of the unauthorized trading of which she was admittedly aware, Latif is estopped from recovering here.

### ORDER

Latif's claims are discredited by the undisputed facts on the record, and her Complaint is dismissed. Even were this not the case, her claims accrued as early as December 2011 and her Complaint filed on August 16, 2014 is untimely. Her decision to continue trading her account until it was depleted and not inform Respondent of her suspicions that unauthorized trades were placed in her account during that same time—in breach of the Customer Agreement she signed—further bars her from recovery. Accordingly, Respondent's Motion for Summary Disposition is hereby GRANTED, and the Complaint is DISMISSED.

DATED: April 10, 2019

  
Kavita Kumar Puri  
Judgment Officer