

2005 BCSECCOM 118

Settlement Agreement

Forex Capital Markets, LLC

Securities Act, RSBC 1996, c. 418

- ¶ 1 The following settlement of issues has been reached between Forex Capital Markets, LLC (Forex) and the Executive Director.

Agreed Statement of Facts

- ¶ 2 As the basis for the undertakings referred to in this settlement, Forex acknowledges the following facts as correct:

Background

1. Forex is a limited liability company incorporated under the laws of the State of Delaware.
2. Since June 2001, Forex has been a futures commission merchant registered with the Commodity Futures Trading Commission and a member of the National Futures Association in the United States.
3. At all material times, Forex maintained its head office in New York City.
4. Forex does not have an office in British Columbia and has never been registered in any capacity under the *Securities Act*, RSBC 1996, c. 418.

Trading in British Columbia

5. From April 2000 to the present, Forex opened and serviced accounts for 369 BC residents.
6. From January 2001 to the present, Forex compensated 26 different referral agents for referring 142 BC residents to Forex.
7. By trading on behalf of BC residents, without being registered to do so and without being able to rely upon any registration exemptions, Forex breached section 34 of the Act.

Mitigating Factors

- ¶ 3 The Executive Director has taken into account the following factors as mitigating the sanctions that might otherwise have applied in the public interest:
1. Staff of the British Columbia Securities Commission is not aware of any complaints made by Forex's BC resident clients.

2005 BCSECCOM 118

2. Forex does not have a previous regulatory history with the Commission.

Undertaking

¶ 4 Forex undertakes to:

1. pay CDN \$142,500.00 to the Commission, upon execution of this settlement representing:
 - (a) \$10,000 in foregone registration fees payable to the Commission if it had been registered under the Act as required;
 - (b) \$112,500 as a monetary payment; and
 - (c) \$20,000 as a contribution towards the costs of the investigation;
2. seek registration, or cause an affiliate of Forex to seek registration, as an exchange contracts dealer in BC;
3. refrain from seeking or accepting any new clients from BC, whether directly or indirectly, until such time as it is registered as an exchange contracts dealer;
4. provide disclosure in the form attached as Appendix A to each of its existing clients resident in BC that have not received such a disclosure until it is registered as an exchange contracts dealer, has transferred its BC clients to a registered affiliate or has ceased all registerable activity in BC;
5. provide information to and cooperate fully with the Commission;
6. comply with the provisions of the Act and *Securities Rules*, B.C. Reg. 194/97, and all applicable regulations, policies, and guidelines; and
7. not say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.

Waiver

¶ 5 Forex waives any right it may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

2005 BCSECCOM 118

Execution in Counterparts and by Facsimile

¶ 6 This settlement may be executed in counterparts and a signed copy transmitted by facsimile shall have the same force and effect as an originally signed copy.

¶ 7 January 31, 2005

“Kenneth Grossman”
Forex Capital Markets, LLC

“D. Sassoon”)
Witness Signature)

David Sassoon)
Witness Name (please print))

32 Old Slip)
NY, NY 10005)
Address)

Attorney)
Occupation)

¶ 8 February 18, 2005

Brenda Leong
Executive Director

2005 BCSECCOM 118

Appendix A

Forex Capital Markets, LLC (Forex) is a futures commission merchant registered with the Commodity Futures Trading Commission and a member of the National Futures Association in the United States. Forex is not registered to trade in a security or exchange contract in British Columbia under the *Securities Act*, RSBC 1996, c. 418.

Forex's disclosure documents have been prepared in accordance with the laws of the United States, not the laws of British Columbia.

You should be aware that:

- The disclosure documents may not contain the same information as documents prepared in accordance with British Columbia laws.
- Forex is incorporated under the laws of the State of Delaware.
- It may be more difficult for you to take legal action against Forex than it would be for you to take action against a company that is incorporated, continued or otherwise organized under the laws of Canada or a province or territory.