

Citation: *Forex Capital Markets LLC (Re)*, 2014 NBFCST 6

Date: 2014-10-14  
Docket: SE-003-2014

IN THE MATTER OF THE *SECURITIES ACT*, S.N.B. 2004, c S-5.5

AND IN THE MATTER OF FOREX CAPITAL MARKETS LLC AND FOREX CAPITAL MARKETS LTD.  
(Respondents)

**SETTLEMENT APPROVAL ORDER**

**WHEREAS** the Respondents Forex Capital Markets LLC and Forex Capital Markets Ltd. entered into a Settlement Agreement dated June 30, 2014 (“Agreement”) with the Financial and Consumer Services Commission of New Brunswick and the Manitoba Securities Commission in which they agreed to a proposed settlement of enforcement proceedings in New Brunswick and Manitoba, subject to the approval of the Financial and Consumer Services Tribunal (“Tribunal”) and the Manitoba Securities Commission;

**AND UPON** reviewing the said Agreement and the Agreed Statement of Facts therein;

**AND UPON** hearing the submissions of the parties at a joint hearing between the Financial and Consumer Services Tribunal and the Manitoba Securities Commission on October 14, 2014;

**AND WHEREAS** the Financial and Consumer Services Tribunal is of the opinion that it is in the public interest to make this Order;

**IT IS HEREBY ORDERED THAT:**

- (a) The settlement of this matter is approved pursuant to paragraph 191(1)(a) of the *Securities Act*, S.N.B. 2004, c S-5.5 [*Securities Act*];
- (b) Pursuant to subsection 186(1) of the *Securities Act*, the Respondents shall pay an administrative penalty of \$22,000 to the Financial and Consumer Services Commission;

(c) There will be no order as to costs.

**DATED** at Saint John, New Brunswick, this 14<sup>th</sup> day of October, 2014.

“original signed by”  
Monica L. Barley, Panel Chair

“original signed by”  
Jean LeBlanc, Panel Member

Financial and Consumer Services Tribunal  
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Saint John, New Brunswick E2L 2J2

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**IN THE MATTER OF: THE SECURITIES ACT (R.S.M. 1988, c. S50) AND  
NEW BRUNSWICK SECURITIES ACT (S.N.B. 2004,  
c. S-5.5)**

**-and-**

**IN THE MATTER OF: FOREX CAPITAL MARKETS LLC AND FOREX  
CAPITAL MARKETS LTD.**

## **SETTLEMENT AGREEMENT**

### **INTRODUCTION**

1. In this Settlement Agreement (“Settlement Agreement”), staff (the “Staff”) of The Manitoba Securities Commission and the Financial and Consumer Services Commission of New Brunswick (collectively the “Commissions”) in each of Manitoba and New Brunswick (collectively, the “Jurisdictions”), Forex Capital Markets LLC (“FXCM US”) and Forex Capital Markets Ltd. (“FXCM UK”) agree to settle certain regulatory issues with respect to the conduct of FXCM US and FXCM UK.

2. The Staff of The Manitoba Securities Commission (“MSC”) have acted throughout the settlement negotiations on behalf of the Staff with their knowledge and approval.

3. The Staff each agree to recommend the terms set out in this Settlement Agreement for approval pursuant to the required procedure in their respective Jurisdictions.

### **AGREED STATEMENT OF FACTS**

4. FXCM US and FXCM UK acknowledges the following facts as correct:
- a) FXCM US is a Delaware limited liability company with its head office located at 55 Water Street, 50<sup>th</sup> Flr, New York, NY, USA.
  - b) FXCM UK is a limited company incorporated in England and Wales with its head office located at 8<sup>th</sup> Floor – 10 Lower Thames Street, London, United Kingdom.
  - c) FXCM US is authorized and regulated by the United States

Commodity Futures Trading Commission (“CFTC”) and the United States National Futures Association and has been registered as a Futures Commission Merchant since 2001 and Retail Foreign Exchange Dealer with the CFTC since 2010.

d) FXCM UK is authorized by and subject to the Financial Conduct Authority in the United Kingdom and has since 2003 been licensed in the United Kingdom to deal directly with retail clients with respect to its permitted activities.

e) FXCM UK is in the business of providing online trading to investors in contracts for difference (“CFDs”) and over the counter spot foreign currency contracts (“FX Spot Contracts”).

f) FXCM US is in the business of providing online trading to investors in FX Spot Contracts.

g) Between 2005 to 2012, FXCM US allowed clients to open accounts and use the firm’s technology to trade in FX Spot Contracts in the Jurisdictions without being registered in the Jurisdictions. In doing so, Staff conclude that FXCM US was engaged in the business of trading in securities in the Jurisdictions.

h) Between 2009 to 2012, FXCM UK allowed clients to open accounts and use the firm’s technology to trade in CFDs and FX Spot Contracts in the Jurisdictions without being registered in the Jurisdictions. In doing so, Staff conclude that FXCM UK was engaged in the business of trading in securities in the Jurisdictions.

i) All FXCM US and FXCM UK accounts were self-directed by the residents of the Jurisdictions, in that residents of the Jurisdictions could log on to the FXCM US and FXCM UK websites and open an account to execute online trades of CFDs or FX Spot Contracts.

j) FXCM US and FXCM UK employees did not offer advice or make recommendations regarding the purchase or sale of the securities to residents of the Jurisdictions. FXCM US and FXCM UK do not have and never have had offices or employees in the Jurisdictions, and did not advertise or otherwise solicit customers in the Jurisdictions.

k) The securities legislation in each of the Jurisdictions requires a securities firm trading in securities to be registered as a dealer in the category of investment dealer or equivalent in that Jurisdiction. FXCM US and FXCM UK acknowledge that they, at the material times, were not registered in any capacity in the Jurisdictions.

l) In 2009, following the issuance of the Ontario Securities Commission Staff Notice 91-702 (the “OSC Staff Notice”), FXCM US and

FXCM UK voluntarily initiated discussions with the OSC and IIROC regarding the transfer of accounts for registrants in Canada to a registered investment dealer. In June, 2012 FXCM US and FXCM UK stopped opening accounts for residents in the Jurisdictions. FXCM US and FXCM UK subsequently took steps to transfer all accounts with residents in the Jurisdictions to Friedberg Mercantile Group Inc. a registrant in the Jurisdictions. This transfer of accounts was completed in January, 2013.

m) During the period 2005 to 2012, FXCM US and FXCM UK opened 896 accounts with residents in Manitoba and 283 accounts with residents of New Brunswick. The total revenue received by FXCM US and FXCM UK from the Manitoba and New Brunswick accounts for the period 2005 to 2012 was \$597,903.18 of which \$524,661.85 was from the Manitoba accounts and \$73,241.33 was from the New Brunswick accounts.

n) FXCM US and FXCM UK represent to the Jurisdictions that the combined profit from the Manitoba and New Brunswick accounts during this period is estimated to be approximately \$180,000.00.

## **MITIGATING FACTORS**

5. The following mitigating factors have been taken into account in arriving at the Settlement Agreement:

- FXCM US and FXCM UK voluntarily transferred their accounts to a registered dealer;
- FXCM US and FXCM UK represent they have not received any complaints by their respective customers that reside in Manitoba or New Brunswick concerning their accounts;
- FXCM US and FXCM UK did not engage in any solicitation of Manitoba or New Brunswick residents;
- FXCM US and FXCM UK customers who opened accounts were advised in plain language regarding the risks associated with trading in CFDs and FX Spot Contracts; and
- FXCM US and FXCM UK have fully cooperated with Staff to resolve the outstanding issues.

## **TERMS OF SETTLEMENT**

6. FXCM US and FXCM UK agree to collectively pay to the Commissions the sum of \$180,000.00 CDN as an administrative penalty comprising of a payment of \$158,000.00 to the MSC and \$22,000.00 to the Financial and Consumer Services Tribunal of New Brunswick ("FCST").

7. The foregoing administrative penalties shall be paid forthwith upon approval of this Settlement Agreement by the MSC and the FCST.

## **ORDER**

8. Staff seek an order from the MSC and the FCST approving this Settlement Agreement and imposing the sanctions set out in paragraphs 6 and 7 of this Settlement Agreement.

## **PROCEDURE**

9. The approval of this Settlement Agreement shall be sought at a joint hearing before the MSC and the FCST.

10. If this Settlement Agreement is approved by the MSC and FCST, and if an Order issues in accordance with this Settlement Agreement, this Settlement Agreement will constitute the entirety of the evidence to be submitted to the Commissions in connection with the Proceedings and, upon the making of the order contemplated by this Settlement Agreement, FXCM US and FXCM UK waives their right to a full hearing and appeal of this matter.

11. Notwithstanding any other provision of this Settlement Agreement, if, for any reason whatsoever, this Settlement Agreement is not approved by the MSC and the FCST or the Order referred to in paragraph 8 above is not made, Staff will be entitled to proceed with whatever steps they are entitled by law to take unaffected by this Settlement Agreement or the settlement discussions and FXCM US and FXCM UK shall have all of the usual rights of a person subject to such proceedings.

12. If the Settlement Agreement is not approved by the MSC and the FCST or the Order set out in paragraph 8 above is not made, the terms of this Settlement Agreement shall remain confidential and shall not be raised in this or any other proceeding, and any admissions contained in this Settlement Agreement shall be considered as without prejudice communications and in furtherance of settlement discussions which will not be binding upon the parties and which will be inadmissible in any proceeding whatsoever.

13. If this Settlement Agreement is approved by the MSC and the FCST and the Order made upon the terms set out in this Settlement Agreement, this Settlement Agreement will become a public document.

14. FXCM US and FXCM UK agree that, if this Settlement Agreement is approved by the MSC and FCST and the Order is made upon the terms set out in this Settlement Agreement, FXCM US and FXCM UK will not raise as a basis for attack on the Order this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement, alleged bias, alleged unfairness, or any such other challenges to the validity of the Order.

15. FXCM US and FXCM UK further agree, that if this Settlement Agreement is approved by the MSC and FCST and the Order is made upon the terms set out in this Settlement Agreement, FXCM US and FXCM UK will not make any statements inconsistent with the terms of this Agreement. Nothing in this section is intended to restrict FXCM US or FXCM UK from making full answer and defence in respect of any other proceeding that may be commenced in any other jurisdiction or before any other adjudicative body other than the MSC and FCST.

**DATED** at Winnipeg, Manitoba this 30<sup>th</sup> day of June, 2014.

“original signed by”  
**Director, Legal and Enforcement**

**DATED** at Saint John, New Brunswick this 24<sup>th</sup> day of June, 2014.

“original signed by”  
**Director, Enforcement, FCNB**

**DATED** at NY, New York this 19 day of June, 2014.

“original signed by”  
**Witness**

“original signed by”  
**Forex Capital Markets Ltd.**

**DATED** at NY, New York this 18 day of June, 2014.

“original signed by”  
**Witness**

“original signed by”  
**Forex Capital Markets LLC**