

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

-----X	:	MISDEMEANOR COMPLAINT
PEOPLE OF THE STATE OF NEW YORK,	:	
	:	
-against-	:	
	:	
TFS-ICAP LLC and	:	NYS Attorney General's Office
TFS-ICAP LIMITED,	:	
	:	
Defendants.	:	
	:	
-----X	:	

INVESTIGATOR BRIAN METZ, of the New York State Office of the Attorney General, Shield Number 2459, being duly sworn, deposes and says that the Defendants are accused as follows:

On or about and between January 1, 2014 and December 31, 2015, at 32 Old Slip, County of New York, State of New York, and elsewhere,

THE DEFENDANTS COMMITTED THE OFFENSES OF:

- | | |
|------------------------------------|---|
| Penal Law § 190.60(1) | Scheme to Defraud in the Second Degree
(a Class "A" misdemeanor) (1 Count) |
| General Business Law § 352-c(1)(a) | Violation of the Martin Act
(an unclassified misdemeanor) (10 Counts) |

IN THAT THE DEFENDANTS ARE ACCUSED OF HAVING:

Engaged in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations, or promises, and so obtained property from one or more of such persons (Penal Law § 190.60(1)); and used or employed an act of fraud, deception, concealment, suppression, false pretense, or fictitious or pretended purchase or sale where engaged in to induce or promote the issuance, distribution, exchange, sale, negotiation, or purchase within or from this state of any securities or commodities, as defined in section three hundred fifty-two of General Business Law

Article 23-A regardless of whether issuance, distribution, exchange, sale, negotiation or purchase resulted (General Business Law § 352-c(1)(a)).

THE GROUNDS FOR THE DEPONENT'S BELIEF ARE AS FOLLOWS:

1. Deponent states that the facts set forth below are based upon: his training and experience; his observations and knowledge of this investigation; information contained on defendants' publicly available website (www.traditionicap.com/about-us); interviews with witnesses known to the New York State Office of the Attorney General; and his review and analysis of the business records of defendants TFS-ICAP LLC and TFS-ICAP LIMITED for the years 2014 and 2015 produced pursuant to subpoena, including, *inter alia*: (i) communications between brokers employed by defendants and bank traders; (ii) internal emails of defendants; (iii) trade blotters listing all offers and trades made through defendants' brokers and its electronic trading platform; and (iv) trade confirmations of actual completed trades brokered by defendants.

2. Deponent states that he has been employed as an Investigator for the State of New York, Office of the Attorney General ("OAG") since December 18, 2015. As more fully described below, deponent states that he is familiar with the financial industry and related standards concerning the offering and sale of stocks, commodities, options, futures, and other securities through, *inter alia*, foreign and domestic exchanges.

3. Deponent states that prior to working at the OAG, he spent over 22 years working in the financial industry for a New York-based stock exchange and various financial institutions and brokerage firms. In particular, deponent worked at the New York Stock Exchange ("NYSE"), NYFIX, Morgan Stanley, Tucker Anthony, EGS Partners, and Bear Stearns. During deponent's employment in the financial industry, he (i) performed trade and market analyses, (ii) reviewed and supervised transaction cost analyses, and (iii) executed trades with hedge funds, mutual funds, day traders, and other money managers. Deponent held various industry positions, including Senior/Head Trader, Managing Director, Executive Director, and Vice President. While at Morgan Stanley, deponent reviewed and analyzed trade execution and commission reports for the presence of trade errors, discrepancies, and potential money laundering indicators. In addition, deponent produced relevant documents and information responsive to requests from regulatory agencies including, *inter*

alia, the U.S. Securities and Exchange Commission (“SEC”), the National Association of Securities Dealers Automated Quotations (“NASDAQ”), and the Financial Industry Regulatory Authority (“FINRA”).

4. While working in the financial industry, deponent held the following licenses: Series 7 (General Securities Representative), Series 24 (General Securities Principal), and Series 63 (Uniform Securities Agent), and was registered with FINRA, SEC, and NASDAQ. In addition, from 1997 to 2008, deponent was a member of the Trader Forum, and from 2004 to 2007, he was a member of the NASDAQ Quality of Markets Committee. Throughout deponent’s career, he participated in various lectures and discussions regarding market structure, financial products, and other financial field related subjects with financial industry members and/or participants.

Overview of FX Options Trading

5. Based on his training and experience, deponent is aware that a foreign exchange currency option, also known as an FX option, is a financial instrument that confers the right, but not the obligation, to buy or sell a fixed amount of a specified currency at a specified exchange rate on or before a specific expiration date. The FX options market is primarily an inter-bank market that frequently relies on inter-dealer brokers to facilitate trades.

6. The majority of FX options trading involves currency pairs of the major industrialized economies, including the U.S. dollar, Euro, Japanese yen, British pound, Canadian dollar, Swiss franc and other G10 currencies. The FX options market for these currencies is comparatively liquid. In contrast, the FX options market for emerging market currencies, such as Latin American, Asian, and Middle Eastern currencies, tends to be comparatively illiquid. This is because the financial and banking systems in emerging markets are less mature, political systems are less stable, and the economies are smaller, resulting in greater financial volatility. Latin American emerging market currencies include the Mexican peso and the Brazilian real, which are quoted with an exchange rate against the U.S. dollar.

7. Globally, trading in FX options averages billions of dollars per day and trillions of dollars per year. Major New York-based banks and branches of other banks deal in emerging market FX options.

8. Bank traders frequently negotiate FX options trades through inter-dealer brokers. Banks typically use multiple, competing inter-dealer brokers for their FX options trading. Bank traders can post bids or offers for FX options directly on the electronic platform of an inter-dealer broker, or by placing an order with individual brokers, generally while speaking by phone or by electronic message or chat with the broker. In practice, traders primarily negotiate trades by calling, messaging, or chatting with a broker. As with most brokerage fees, inter-dealer brokers are compensated based on volume of executed trades; individual brokers are paid commissions based on trade volume.

9. Additionally, inter-dealer brokers provide bank traders with market information on a daily basis, including the availability of tradeable FX options as well as information on completed FX options trades. The trade information provided by inter-dealer brokers, among other information, is material to the decision making of bank traders in FX options, because actual trades are the best indication of market pricing and liquidity. Bank traders use this trade information, along with other information, in their pricing models to value FX options.

10. Prior to 2013, the FX options market in the United States was largely unregulated. However, in the wake of the 2008 financial crisis, in 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the Commodity Exchange Act to expand the rulemaking and oversight powers of the Commodity Futures Trading Commission (“CFTC”) over certain financial instruments, including FX options. Subsequently, the CFTC passed regulations requiring certain market participants dealing in FX options to register with the CFTC and become Members of the National Futures Association (“NFA”), a self-regulatory organization for the U.S. derivatives industry.

11. Additionally, the CFTC enacted rules and regulations requiring that market participants in FX options retain books and records involving trading activity and communications including emails, IM Chats, and recorded phone calls. In particular, the new rules promulgated by

the CFTC, which became fully effective in December 2013, also include the following: (1) firms that trade FX options must register as swap dealers; (2) inter-dealer brokers in FX options must register as brokers and post trades through swap execution facilities (“SEFs”); (3) all trades executed by registrants must be published daily to the public; (4) all oral communications that lead to the execution of a trade,¹ whether by telephone, voicemail, mobile device, or other digital or electronic media, must be retained by registrants for a period of one year; and (5) records of all written communications that lead to the execution of a trade, whether by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media, must be retained by registrants for a period of five years.

12. New York State’s General Business Law (“GBL”) Article 23-A, Section 352 *et seq.* (the “Martin Act”) protects the public from fraudulent practices in the commodities and securities industries. The Martin Act provides the Attorney General with authority to investigate and criminally prosecute all fraudulent acts and practices relating to, *inter alia*, the purchase and sale of commodities and securities. See GBL §§ 352, 352-c, 358, 359-g.

Defendants TFS-ICAP LLC and TFS-ICAP LIMITED

13. Based on deponent’s review of the business records of defendants TFS-ICAP LLC and TFS-ICAP LIMITED, as well as information on defendants’ publicly available website (www.traditionicap.com/about-us), defendants are part of a joint venture formed on or about July of 2000. The joint venture has offices in New York, London, Frankfurt, Copenhagen, Tokyo, Hong Kong, and Singapore.

14. Defendants’ New York-based offices include defendant TFS-ICAP LLC, a Limited Liability Company organized under the laws of the State of New York, with offices in the County and State of New York at 32 Old Slip, New York, New York 10005. According to the business

¹ This includes communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices.

records of defendant TFS-ICAP LLC and NFA registration records, TFS-ICAP LLC is registered with the NFA as a broker to solicit or accept offers of FX options in the United States.

15. Defendants' London offices include defendant TFS-ICAP LIMITED, a private limited company organized under the laws of the United Kingdom, with offices in the United Kingdom at Beaufort House, 15 St. Botolph Street, London, EC3A 7QX. According to the business records of TFS-ICAP LIMITED and NFA registration records, TFS-ICAP LIMITED is registered with the NFA as a broker to solicit or accept offers of FX options in the United States.

Scheme to Defraud and Martin Act Violations Charged Against Defendants

16. Deponent's review of the business records of defendants reveals that from approximately January 1, 2014 to December 31, 2015, TFS-ICAP LLC and TFS-ICAP LIMITED were inter-dealer brokers that solicited and accepted orders to buy and sell FX options to and from traders who were both based in the New York State offices of certain financial institutions and physically located within the state and county of New York. ("New York-Based Traders"). TFS-ICAP LLC and TFS-ICAP LIMITED earned commission-based fees for matching buyers and sellers of FX options, including buyers and sellers of FX options for Latin American emerging market currencies ("Latin American FX options").

17. Deponent's review of the business records of defendants further reveals that from approximately January 1, 2014 to December 31, 2015, employees at TFS-ICAP LLC and TFS-ICAP LIMITED used and employed fraudulent practices to solicit and accept orders to buy and sell Latin American FX options to and from New York-Based Traders. In particular, brokers employed by TFS-ICAP LLC and TFS-ICAP LIMITED systematically and intentionally engaged in the fraudulent practice of showing and announcing fake trades in Latin American FX options to New York-Based Traders via instant message chats and voice transmissions, in order to create a false appearance of liquidity, to induce New York-Based Traders to buy and sell Latin American FX options via TFS-ICAP LLC and TFS-ICAP LIMITED, and to thereby obtain commissions.

18. By way of example, the following fake trades in Latin American FX options were announced to New York-Based Traders by brokers employed by defendants TFS-ICAP LLC and

TFS-ICAP LIMITED, while acting in the course of their employment for defendants TFS-ICAP LLC and TFS-ICAP LIMITED, respectively.


- i. On January 8, 2014, from approximately 8:08 AM to 11:23 AM, Broker 1 employed by TFS-ICAP LIMITED, whose identity is known to the OAG, announced to New York-Based Trader 1, whose identity is known to the OAG, a foreign exchange currency option trade involving Brazilian reals that did not represent an actual trade.
- ii. On January 8, 2014, at approximately 11:15 AM, Broker 2 employed by TFS-ICAP LIMITED, whose identity is known to the OAG, announced to New York-Based Trader 2, whose identity is known to the OAG, a foreign exchange currency option trade involving Brazilian reals that did not represent an actual trade.
- iii. On February 12, 2014, at approximately 8:40 AM, Broker 1 employed by TFS-ICAP LIMITED, whose identity is known to the OAG, announced to New York-Based Trader 1, whose identity is known to the OAG, a foreign exchange currency option trade involving Brazilian reals that did not represent an actual trade.
- iv. On April 22, 2014 at approximately 9:17 AM, Broker 3 employed by TFS-ICAP LIMITED, whose identity is known to the OAG, announced to New York-Based Trader 3, whose identity is known to the OAG, a foreign exchange currency option trade involving Mexican pesos that did not represent an actual trade.
- v. On October 21, 2014 at approximately 9:00 AM, Broker 4 employed by TFS-ICAP LLC, whose identity is known to the OAG, announced to New York-Based Trader 4, whose identity is known to the OAG, a foreign exchange currency option trade involving Mexican pesos that did not represent an actual trade.
- vi. On January 28, 2015 at approximately 11:34 AM, Broker 3 employed by TFS-ICAP LLC, whose identity is known to the OAG, announced to New York-Based Trader 5, whose identity is known to the OAG, a foreign exchange currency option trade involving Brazilian reals that did not represent an actual trade.

- vii. On February 18, 2015 at approximately 2:14 PM, Broker 5 employed by TFS-ICAP LLC, whose identity is known to the OAG, announced to New York-Based Trader 4, whose identity is known to the OAG, a foreign exchange currency option trade involving Brazilian reals that did not represent an actual trade.
- viii. On April 6, 2015, at approximately 3:09 PM, Broker 3 employed by TFS-ICAP LLC, whose identity is known to the OAG, announced to New York-Based Trader 3, whose identity is known to the OAG, a foreign exchange currency option trade involving Mexican pesos that did not represent an actual trade.
- ix. On June 19, 2015, at approximately 8:01 AM, Broker 5 employed by TFS-ICAP LLC, whose identity is known to the OAG, announced to New York-Based Trader 4, whose identity is known to the OAG, a foreign exchange currency option trade involving Mexican pesos that did not represent an actual trade.
- x. On July 20, 2015, at approximately 9:19 AM, Broker 3 employed by TFS-ICAP LLC, whose identify is known to the OAG, announced to New York-Based Trader 1, whose identity is known to the OAG, a foreign exchange currency option trade involving Mexican pesos that did not represent an actual trade.

21. Deponent states that his review of defendants' document productions, including email communications between defendants' brokers, and their high managerial agents, whose identities are also known to the OAG, reveal that high managerial agents of TFS-ICAP LLC and TFS-ICAP LIMITED were aware of the above-mentioned conduct and recklessly tolerated it.

False statements made herein are
Punishable as a Class A misdemeanor
Pursuant to Penal Law Section 210.45

Dated: September 24, 2018
New York, New York


Investigator Brian Metz
Shield 2459
New York State Office of the Attorney General