

ADMINISTRATIVE PROCEEDING

BEFORE THE

SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:)	
)	ORDER TO CEASE AND DESIST
Louis H. Rivas)	
)	
and)	File No. 08008
)	
The FOREX Project,)	
)	
Respondents.)	
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WHEREAS, the Securities Division of the Office of the Attorney General of the State of South Carolina (the "Division"), pursuant to authority granted in the South Carolina Uniform Securities Act of 2005 (the "Act"), S.C. Code Ann. §§ 35-1-101 to 35-1-703 (Supp. 2007), on or about March 13, 2008, received information regarding activities of Louis H. Rivas ("Rivas") and The FOREX Project ("Forex") which could constitute violations of the Act;

WHEREAS, the information led the Division to open and conduct an investigation of Rivas and Forex (collectively, the "Respondents") pursuant to S.C. Code Ann. § 35-1-602, and this investigation is ongoing;

NOW THEREFORE, in connection with the investigation, the Division has determined that the Respondents have engaged, are engaging, or are about to engage in an act, practice, or course of business constituting a violation of the Act or a rule adopted or order issued under the Act and hereby includes in this Order to Cease and Desist (the "Order") a statement of the reasons for the Order, a statement of the civil penalty sought as a result, and a notice that a hearing will be scheduled if either Respondent requests a hearing.

FACTUAL HISTORY

1. Respondent Rivas is a Tennessee resident.
2. Upon information and belief, Respondent Forex is a sole proprietorship. Upon information and belief, Respondent Forex is not registered with the Secretary of State's office of any state.
3. Upon information and belief, the primary business address for Respondents during the time period of the violations alleged herein was 6031 Century Oaks Drive, Chattanooga, Tennessee 37416.
4. Upon information and belief, Respondents' South Carolina business address was 333 South Pine Street, Spartanburg, South Carolina, 29302.
5. In 2007 and 2008, Respondents offered "training seminars" on foreign currency trading and on the foreign currency exchange market to interested persons in Tennessee, South Carolina, and other states.
6. At the "training seminars" Respondents touted their success in exchanging currency on the foreign currency exchange market.
7. Seminar attendees were told that Respondents' earned high returns trading foreign currency using a method Respondent Rivas termed the "Fibonacci filter."
8. At the conclusion of one or more of the "training seminars," attendees were offered (1) the chance to trade their own money on the foreign currency exchange market following training, which was to be provided by Respondents, and (2) the opportunity to invest in a promissory note with a guaranteed rate of return of five percent (5%) a month following an initial delay of three months from the date of investment (the "Investment Opportunity" or "Promissory Note Option").

9. Upon information and belief, offerees were told that if they chose to place money in the Promissory Note Option their principal would be guaranteed.
10. Upon information and belief, offerees were also told that if they placed money under the Promissory Note Option they would receive a five thousand dollar (\$5,000.00) credit which would be added to the amount the offeree invested to determine the principal amount of the promissory note.
11. Offerees were told that if they invested pursuant to the Promissory Note Option they were guaranteed a rate of return of (5%) a month on their principal after an initial delay of three months from the date of investment, and that the five percent (5%) a month return would continue until the thirty-sixth month after investment. The returns Respondents promised were not received by the investors.
12. Offerees were told that the Investment Opportunity was for a period of thirty-six months and, that, at the end of this period, the Respondents would return the full amount of the investor's principal to the investor.
13. Investors were told that money invested in the Investment Opportunity with the Respondents would be used by the Respondents to trade in the foreign currency exchange market.
14. Respondents represented they maintained active trading accounts at Interbank FX, LLC in Utah ("Interbank") and that they would trade the investor's money on the foreign currency exchange market.
15. Upon information and belief, during the relevant time period, Respondents did maintain active trading accounts at Interbank in order to trade on the worldwide foreign currency exchange market.

16. Upon information and belief, the trading accounts at Interbank are the only accounts Respondents used during the period for foreign currency exchange and/or trading.
17. Respondents, operating in and from the State of South Carolina, offered the Investment Opportunity to one or more South Carolina residents during the period October 2007 to February 2008.
18. Upon information and belief, one or more South Carolina residents invested in the Investment Opportunity with Respondents during the period October 2007 to February, 2008.
19. Bank records show that no deposits were made to any of Respondents' trading accounts at Interbank between August 17, 2007, and March 5, 2008.
20. Upon information and belief, Respondents' representations that funds invested in the Investment Opportunity by South Carolina residents would be traded by Respondents in the foreign currency market were false.
21. Respondent Rivas had previously been convicted of securities fraud.
22. At the time Respondents' solicited South Carolina residents to invest with them, neither Respondent disclosed to the South Carolina residents that Respondent Rivas had been previously convicted of securities fraud.
23. Respondent Rivas was invited, via subpoena, to come to the offices of the South Carolina Securities Commissioner on June 10, 2008, to give a statement concerning his business at Forex and the trading method he used as well as the terms of the Investment Opportunity offered to investors.
24. The subpoena for Respondent Rivas was sent, via certified mail, to his last known address.

25. On or about June 6, 2008, the subpoena was returned unopened.
26. Respondent Rivas did not appear on June 10, 2008, to discuss the Investment Opportunity or other business he was conducting and has not made contact with Division staff at any time since that date to discuss Forex, the Investment Opportunity, or any related matters.
27. The Investment Opportunity offered and sold by Respondents constitutes a security under the Act.
28. The Investment Opportunity offered and sold by Respondents was not registered for sale in or from the State of South Carolina.
29. Respondent Rivas has never been registered in the State of South Carolina as an agent, investment adviser representative, or other person authorized to give financial advice or to offer or sell securities in or from this State.
30. Respondent Forex has never been registered in the State of South Carolina as a broker-dealer, issuer, investment adviser or other person authorized to give financial advice or to offer or sell securities in or from this State.

APPLICABLE LAW

31. Pursuant to S.C. Code Ann. § 35-1-703, the Act took effect on January 1, 2006.
32. Pursuant to S.C. Code Ann. § 35-1-102, notes, evidences of indebtedness, and investment contracts are considered “securities” in this State.
33. Pursuant to S.C. Code Ann. § 35-1-301, it is unlawful for a person to offer or sell a security in this State unless (1) the security is a federal covered security; (2) the security, transaction, or offer is exempted from registration under Sections 35-1-201 through 35-1-203; or (3) the security is registered under the Act.

34. Pursuant to S.C. Code Ann. § 35-1-102 (17), and subject to listed exemptions, an “[i]ssuer” means a person that issues or proposes to issue a security.
35. Pursuant to S.C. Code Ann. § 35-1-102 (2), an “[a]gent” means an individual, other than a broker-dealer who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities, or represents an issuer in effecting or attempting to effect purchases or sales of the issuer’s securities.
36. Pursuant to S.C. Code Ann. § 35-1-402 (a), it is unlawful for an individual to transact business in this State as an agent unless the individual is registered under the Act as an agent or exempt from registration under S.C. Code Ann. § 35-1-402 (b).
37. Pursuant to S.C. Code Ann. § 35-1-402(d), it is unlawful for an issuer engaged in offering, selling, or purchasing securities in this State to employ or associate with an agent who transacts business in this State on behalf of broker-dealers or issuers unless the agent is registered under Section 35-1-402(a) or exempt from registration under Section 35-1-402(b).
38. Pursuant to S.C. Code Ann. § 35-1-503(a), in a civil action or administrative proceeding under the Act, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.
39. Pursuant to S.C. Code Ann. § 35-1-501, it is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:
 - a. To employ a device, scheme, or artifice to defraud;
 - b. To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

- c. To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.
40. Pursuant to S.C. Code Ann. § 35-1-602(a)(1), the Securities Commissioner may conduct public or private investigations within or outside South Carolina which the Securities Commissioner considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate the Act or a rule adopted or order issued under the Act, or to aid in the enforcement of the Act or in the adoption of rules and forms under the Act.
41. Regarding administrative remedies under the Act:
- a. Pursuant to S.C. Code Ann. § 35-1-604(a)(1), if the Securities Commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of the Act or a rule adopted or order issued under the Act, the Securities Commissioner may issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with the Act.
 - b. Pursuant to S.C. Code Ann. § 35-1-604(b), a cease and desist order issued under S.C. Code Ann. § 35-1-604(a)(1) is effective on the date of issuance and must include a statement of any civil penalty or costs of investigation the Securities Commissioner will seek, a statement of the reasons for the order, and notice about a hearing.
 - c. Pursuant to S.C. Code Ann. § 35-1-604(c), if a hearing is requested or ordered pursuant to S.C. Code Ann. § 35-1-604(b), a hearing must be held. A final order

may be issued after the hearing that may make final, vacate, or modify the order issued under S.C. Code Ann. § 35-1-604(b).

- d. Pursuant to S.C. Code Ann. § 35-1-604(d), in a final order, the Securities Commissioner may impose a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) for each violation of the Act.
- e. Pursuant to S.C. Code Ann. § 35-1-604(e), in a final order, the Securities Commissioner may charge the actual cost of an investigation or proceeding for a violation of the Act or a rule adopted or order issued under the Act.

DETERMINATION

42. WHEREAS, based on the foregoing, the Division has determined that Respondent Rivas and Respondent Forex have engaged, are engaging, and/or are about to engage in an act, practice, or course of business constituting a violation of the Act or a rule adopted or order issued under the Act as follows:

- a. During the period in or around October, 2007, to February, 2008, Respondents offered and sold an Investment Opportunity constituting a “security” under state law both in and from the State of South Carolina.
- b. Respondents violated S.C. Code Ann. § 35-1-301 by offering securities in and from the State of South Carolina when the securities offered by Respondents are not now and during the time period of their offering in and from the State of South Carolina were not registered for sale in or from the State of South Carolina.
- c. Respondent Rivas violated S.C. Code Ann. § 35-1-402(a) when Respondent Rivas, who is not now and during the time of the offering described above was not registered to offer or sell securities in or from the State of South Carolina, or

to represent an issuer in or from this State, offered and sold securities in and from this State.

- d. Respondent Forex violated S.C. Code Ann. § 35-1-402(d) when Respondent Forex, while engaged in offering, selling or purchasing securities in this State, employed, or associated Respondent Rivas to transact business on behalf of Respondent Forex while Respondent Rivas was not registered to offer or sell securities in or from the State of South Carolina, or to represent an issuer in or from this State.
- e. Neither Respondent has asserted to the Division any claim of exemption from registration, either on his own behalf or on behalf of the security.
- f. Respondents violated S.C. Code Ann. § 35-1-501 and engaged in securities fraud by employing a device, scheme or artifice to defraud; making untrue statements of one or more material facts; omitting to state one or more material facts concerning themselves, their prior business experience, the security, the use of funds gathered from the investors; and engaging in an act, practice or course of business that operated as a fraud against another person when, in connection with the offer of the security in and from the State of South Carolina, the Respondents:
 - i. Used advertising materials and/or untrue statements to get investors to attend “training seminars” in foreign currency trading and invest with the Respondents;
 - ii. Defrauded investors by lying about and not fully and fairly disclosing all material facts concerning the Respondents’ intended

use of the investor's funds and/or the nature of the Respondents' business;

- iii. Misrepresented their qualifications and omitted to state a material fact about Respondent Rivas' qualifications, that Respondent Rivas had previously been convicted of securities fraud;
- iv. Stated to investors the investors would receive a guaranteed rate of return when the Respondents, who knew the intended use of the investors' funds, knew the use would not generate the expected returns; and
- v. Published, circulated, and distributed materials and/or statements which contain untrue statements of material fact or which are otherwise false or misleading.

CEASE AND DESIST ORDER

NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a)(1), IT IS HEREBY **ORDERED** that each Respondent:

- a. Cease and desist from offering and/or selling securities in South Carolina, in violation of S.C. Code Ann. §§ 35-1-301 and 35-1-402 (Supp. 2008);
- b. Cease and desist from employing a device, scheme, or artifice to defraud another person or engaging in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person in violation of S.C. Code Ann. § 35-1-501 (Supp. 2008);
- c. Cease and desist from making untrue statements and/or omissions of material fact in connection with the offer or sale of a security, and engaging in dishonest and

unethical business practices in violation of S.C. Code Ann. § 35-1-501 (Supp. 2008); and

- d. Pay a civil penalty in the amount of ten thousand dollars (\$10,000.00) and costs of the investigation of five thousand dollars (\$5,000.00) if this Order becomes effective by operation of law, or, if either Respondent seeks a hearing and a hearing officer or any other legal authority resolves this matter, pay a civil penalty in an amount not to exceed ten thousand dollars (\$10,000.00) for each violation of the Act by each Respondent and the actual cost of the investigation or proceeding.

REQUIREMENT OF ANSWER AND NOTICE OF OPPORTUNITY FOR HEARING

Respondents are hereby notified that they each have the right to a hearing on the matters contained herein. To schedule such a hearing, a Respondent must file with the Securities Division, Post Office Box 11549, Rembert C. Dennis Building, Columbia, South Carolina 29211-1549, attention: Thresechia Navarro, within thirty (30) days of notification of the issuance of this Order to Cease and Desist a written Answer specifically requesting a hearing therein.

In the written Answer, the Respondent, in addition to requesting a hearing, shall admit or deny each factual allegation in this Order, shall set forth specific facts on which the Respondent relies, and shall set forth concisely the matters of law and affirmative defenses upon which the Respondent relies. A Respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state.


Failure by a Respondent to file a written request for a hearing in this matter within the thirty (30) day period stated above shall be deemed a waiver by that Respondent of his right to such a hearing. Failure of a Respondent to file an Answer, including a request

for a hearing, shall result in this Order, including the stated civil penalty, becoming final as to that Respondent by operation of law.

CONTINUING TO ENGAGE IN ACTS DETAILED BY THIS ORDER AND/OR SIMILAR ACTS MAY RESULT IN THE DIVISION'S FILING ADDITIONAL ADMINISTRATIVE ACTIONS AND/OR SEEKING FURTHER ADMINISTRATIVE FINES. WILLFUL VIOLATION OF THIS ORDER COULD RESULT IN CRIMINAL PENALTIES UNDER S.C. CODE ANN. § 35-1-508. REGARDING MATTERS DESCRIBED HEREIN, THIS ORDER DOES NOT PRECLUDE THE FILING OF PRIVATE CAUSES OF ACTION OR THE FILING OF CRIMINAL CHARGES UNDER S.C. CODE ANN. § 35-1-508.

IT IS SO ORDERED.

This 27th day of April, 2009.



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