U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
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Office of Proceedings

EDWARD FAATZ,
Complainant,

v.

TRADESTATION SECURITIES, INC., and TRADESTATION GROUP, INC.,
Respondents.

CFTC Docket No. 16-R019
Served electronically

ORDER GRANTING RESPONDENTS' MOTION TO DIMISS AND DISMISSING THE COMPLAINT

Before: Kavita Kumar Puri, Judgment Officer
Commodity Futures Trading Commission
Washington, D.C.

Appearances: Edward Faatz, *pro se*
Port Byron, NY
For Complainant

Steven M. Greenbaum, Vice President & General Counsel
TradeStation Securities, Inc.
Plantation, FL
For Respondents

Edward Faatz, appearing in this forum *pro se* and by way of a summary proceeding,[1] seeks $17,085.33 in damages purportedly caused by TradeStation

[1] Summary proceedings can be elected by the parties in cases where the total damages claimed do not exceed $30,000, exclusive of interest and costs. In such proceedings, oral

Securities, Inc. (TSI) and TradeStation Group, Inc. (TSG), due to their corporate affiliation with his registered foreign exchange dealers, Interbank FX, LLC (Interbank) and IBFX, Inc. (IBFX). Reparations Compl. (Sept. 15, 2016); Compl. Addendum (Nov. 1, 2016). These losses were caused by alleged violations of rules concerning conflict of interest and first in first out (FIFO) requirements from November 2011 through September 2014. Discovery has been stayed since May 12, 2017, pending resolution of Respondents' Motion to Dismiss. For the reasons discussed below, Respondents' Motion to Dismiss is granted and Faatz's Complaint is dismissed.

I. Background

A. The Parties, Interbank FX, LLC and IBFX, Inc.

Complainant Edward Faatz, a resident of Port Byron, New York, opened a self-directed forex trading account with Interbank on November 8, 2010. Motion to Dismiss (May 11, 2017) Ex. 3 (NFA Arbitration Answer and Affirmative Defenses at 2).

Non-Party Interbank, the dealer with which Faatz opened his forex trading account, was a CFTC-registered retail foreign exchange dealer from September 2010 through October 2013. *See* NFA Basic Search, available at https://www.nfa.futures.org/basicnet/Details.aspx?entityid=5iQcIIQr4ds%3d&rn=Y. It was acquired by TradeStation Group, Inc. (TSG) in late 2011, and renamed

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hearings are not required and proof in support of each party's case may be supplied in the form and manner prescribed by §12.208. *See* Commission Rule §12.2.

"IBFX, Inc." Motion to Dismiss (May 11, 2017) Ex. 4 (Motion to Dismiss NFA Arbitration at 1 & n.1).

Non-Party IBFX was a CFTC-registered retail foreign exchange dealer and member from September 2010 to April 2016. NFA Basic Search, available at https://www.nfa.futures.org/basicnet/Details.aspx?entityid=cGKddvfqsJg%3d&rn=Y. Once TSG acquired Interbank in late 2011, it renamed it IBFX, and thereafter Faatz's forex account was held at IBFX. Because Interbank became IBFX, I sometimes refer to them as Interbank/IBFX in this Initial Decision. IBFX and Interbank were named Respondents in Faatz's NFA Arbitration claim filed on September 22, 2016.

Respondent TradeStation Group, Inc. (TSG) is the parent company of IBFX and is currently registered as a Principal of TSI. TSG was also a registered Principal of Interbank from December 7, 2011 to October 17, 2013, and of IBFX from June 15, 2010 to April 6, 2017. NFA Basic Search, available at https://www.nfa.futures.org/basicnet/Details.aspx?entityid=%2fL0NXKuIOWE%3d&rn=N.

Respondent TradeStation Securities, Inc. (TSI) is a registered Futures Commission Merchant (FCM) and has been since October 2, 2003. It has never been a registered forex dealer member or retail foreign exchange dealer. NFA Basic Search, available at https://www.nfa.futures.org/basicnet/Details.aspx?entityid=mC3zPjV7mYo%3d&rn=Y. The only nexus TSI has to the events of this complaint is that it shares a Principal, TSG, in common with Interbank/IBFX.

B. Procedural History

1. NFA Arbitration Complaint

Faatz originally filed a complaint with this Office on September 15, 2016. Compl. (Sept. 15, 2016) (Reparations Complaint or Complaint). However, by the time Faatz filed his Reparations Complaint, he had already filed a Notice of Intent (NOI) to file an arbitration complaint with National Futures Association (NFA) one week earlier, on September 7, 2016. Respondents' Motion to Dismiss (May 11, 2017) Ex. 2 (NFA Arbitration Complaint) (noting NOI filed Sept. 7, 2016).[2] Faatz then timely filed a formal arbitration complaint before NFA on September 22, 2016, *id.*, while his Reparations Complaint was pending before this Office. His NFA Arbitration Complaint named IBFX, Interbank, TSI and Monex Group, Inc. as respondents, and sought $17,058 in trading losses as well as "45% punitive damages of $7,676.25 for a total claim of $24,734.58." *Id.* The basis of his NFA Arbitration Complaint was that:

> IBFX, Inc., Interbank FX, LLC, Tradestation Securities, Inc. and the Monex Group, Inc. didn't comply or follow all NFA and CFTC Rules and Regulations during my single account trading resulting in my losses of $17,058.33 from November, 2010 to September, 2014. FIFO regulations were not implemented. Their company maintained its conflict of interest by acting as the Forex Market Maker and Forex Broker.

NFA Arbitration Compl. at 2.

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[2] Pursuant to NFA Arbitration Code § 6, an arbitration proceeding may be initiated by the filing of a notice of intent to arbitrate, after which a claimant has 35 days once NFA provides the claimant with a copy of the Arbitration Code and its Arbitration Claim form to serve a completed Arbitration Claim. *See* NFA Code of Arbitration, *available at* https://www.nfa.futures.org/rulebook/rules.aspx?Section=5.

Although Faatz named an assortment of entities as NFA respondents, the NFA respondents themselves treated the NFA Arbitration Complaint as alleged only against IBFX and Interbank, *see* Motion to Dismiss (May 11, 2017) Ex. 3 (NFA Arbitration Answer & Aff. Defenses at 1 & n.1), as did the NFA arbitrator, *see* Motion to Dismiss (May 11, 2017) Ex. 1 (NFA Arbitration Order (March 6, 2017)). There is nothing in the NFA Arbitration record that formally dismisses TSG and Monex from that proceeding, but it is clear from the NFA Arbitration caption and the NFA arbitrator's own order that only Interbank and IBFX were NFA respondents.[3]

On March 6, 2017, an NFA Arbitrator found Faatz's NFA Arbitration Complaint to be barred by the statute of limitations and dismissed it without prejudice. Motion to Dismiss (May 11, 2017) Ex. 1 (NFA Arbitration Order (March 6, 2017)).

2. The Reparations Complaint

Faatz's Reparations Complaint was filed with this Office on September 15, 2016.[4] It arises out of the same facts, alleged misconduct and alleged losses as the NFA Arbitration Complaint. For example, the Reparations Complaint alleges that

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[3] That may be because "Monex Group, Inc." is not registered with NFA and TSI is not a Principal of either Interbank or IBFX, but nothing in the NFA record filed with this Office dismisses them for these reasons expressly.

[4] Faatz claims that he filed a "Reparations Complaint" on August 4, 2016 and then paid the filing fee on September 15, 2016. Faatz Opp. To Motion to Dismiss at 2. But in fact Faatz filed a complaint form with the Division of Enforcement on August 4, 2016. Compl. (Sept. 15, 2016) (attaching Aug. 4, 2016 Division of Enforcement Complaint Form). His actual Reparations Complaint was verified, signed and sent on September 15, 2016. Compl. This constitutes filing.

"FIFO, CFTC and NFA Regulations and Rules were not complied from November, 2011 through September, 2014," causing him "$17,058.33" in losses. Compl. (Sept.15, 2016). The Reparations Complaint also attaches documents alleging that "FIFO regulations were not implemented. Their company maintained its conflict of interest by acting as the Forex Market Maker and Forex Broker." *See, e.g.*, Compl. Attachment (CFTC Enforcement Submission (Aug. 4, 2016)); 3d Compl. Addendum (January 16, 2017) (same). This is precisely the allegation formulation used in the NFA Arbitration Complaint. *See supra* p. 4.

And as in the NFA Arbitration Complaint, Faatz names an assortment of poorly identified entities in this Reparations Complaint. Initially, Faatz named IBFX, TSI and Monex Group, Inc. as Respondents. Compl. (Sept. 15, 2016). However, pursuant to a deficiency letter from this Office, Faatz stated he intended to name "IBFX Group, Monex Group and Tradestation Group companies." 2d Compl. Addendum (Nov. 27, 2016). The Office of Proceedings followed up with another deficiency letter on January 6, 2017, making clear that (1) Faatz could not name "Groups" of companies and in fact had to specify which ones were involved with the misconduct; (2) the named respondent had to be directly involved with his account and had to cause or be responsible for the alleged losses; (3) unregistered entities, such as Monex Group, Inc., could not be named Respondents; and (4) Faatz could not name IBFX and Interbank as Respondents because they were involved in a parallel NFA Proceeding, unless he dropped the NFA Arbitration against them.

Office of Proceedings Third Deficiency Letter (Jan. 6, 2017); *see also* Office of Proceedings Letter re NFA Arbitration and Damages (March 2, 2017).

In response, Faatz sent a letter noting only "Tradestation" remained in the Reparations Complaint because "[t]he TradeStation Group companies were directly involved in my account." Third Compl. Addendum (Jan. 16, 2017). He did not state how they were involved directly or even what relationship they may have had with respect to his forex account. This Office ultimately ruled that—notwithstanding the repeated attempt to name many or all registered TradeStation entities that purportedly fall within the TradeStation umbrella—Faatz's Reparations Complaint would proceed only against TSI and TSG. Office of Proceedings Letter re NFA Arbitration and Damages (March 2, 2017).

3. Respondents Motion to Dismiss

The case was forwarded to JO McGuire on May 9, 2017,[5] and Respondents promptly filed a Motion to Dismiss on May 11, 2017 accompanied by a Motion to Stay Discovery pending disposition of their dispositive motion. By way of e-mail to the parties, JO McGuire ruled that "the deadline to initiate discovery" was suspended. E-mail from PROC Filings to Faatz re *Faatz v. Tradestation* (16-R019) - Deadline to File Opposition to Respondents' Motion to Dismiss (May 12, 2017). Briefing was completed by June 9, 2017.

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[5] This case was reassigned to me on July 27, 2017. On April 9, 2018, I was appointed by the Commission as its Judgment Officer, though I had served that function since July 2017. *See* https://www.cftc.gov/LawRegulation/OpinionsAdjudicatoryOrders/index.htm, appended as Appendix A to this Initial Decision. As this Initial Decision is the first procedural or substantive order I have issued in this case, I have no cause to reconsider any such actions undertaken between the case's assignment to me on July 27, 2017 and my appointment on April 9, 2018.

C. Factual Background and Findings

On November 8, 2010, Faatz opened a self-directed forex account with Interbank. Motion to Dismiss (May 11, 2017) Ex. 3 (NFA Ans. & Aff. Defenses at TSI0001-005 (Oct. 24. 2016)). The Customer Agreement in his account opening documents was a legal contract between Interbank "and its successors and assigns" as well as himself. *Id.* at TSI0005. Because Interbank was renamed IBFX in 2011, *see supra* p. 3, and there are no other alleged "successors and assigns," Faatz's contractual relationship runs only to Interbank and IBFX.

The account opening documents also make clear that in the four prior fiscal year quarters immediately preceding Faatz's account opening, a majority of forex accounts held at Interbank were unprofitable. *Id.* at TSI0004. For example, in the third quarter of 2010, 72% of Interbank's forex accounts were unprofitable, while only 28% were profitable. *Id.* And in fact Interbank warned Faatz that though it "is prepared to open [his] account, it is necessary to advise you to reconsider this investment," because "spot foreign currency trading might be too risky" and the losses in such trading "can be substantial." *Id.*

Having received the warnings and signed the Customer Agreement, Faatz funded his account with $2,000 and traded through 2014. Some years he was profitable (2011 and 2013), and other years he was not (2010, 2012, and 2014). Motion to Dismiss (May 11, 2017) Ex. 3 (NFA Answer & Aff. Defenses at 6-7 (Oct. 24, 2016)). His worst trading year was 2012, in which he suffered $25,872.90 in

losses. *Id.* His net loss during his entire trading history at Interbank and IBFX was $16,910.53. *Id.*[6]

Faatz knew of these losses, and communicated his discontent with his forex dealer in 2012. For example, on April 26, 2012, Faatz sent the following e-mail to Brandon Butler, a Liquidity Manager who worked for IBFX:

> Following the purchase of your company by Trade Station, it's far more difficult to be a customer and trade profitably. During my response, another order has closed . . . at a loss of $7,431.24 by margin . . . . This month to date, I've lost $19,520.81, representing the majority of my equity . . . I'm filing complaints against my losses and your company . . . I'll (sic) closing when I determine, following the closing of my trades, if there is any money left."

Motion to Dismiss (May 11, 2017) Ex. 3 (NFA Answer & Aff. Defenses at 3 & Ex. A (Oct. 24, 2016)). A couple of weeks later, on May 6, 2012, Faatz e-mailed Arthur Apostolakos a Client Services employee with IBFX to let IBFX know that he would "be filing formal complaints and moving my trade account to a more profitable broker." Motion to Dismiss (May 11, 2017) Ex. 3 (NFA Answer & Aff. Defenses Ex. B (Oct. 24, 2016)). There is nothing in the record reflecting whether the complaints were actually filed, and if so, how they were resolved. What is clear is that Faatz did not close his account at IBFX, and in fact continued to trade in his account on virtually a daily basis. Motion to Dismiss (May 11, 2017) Ex. 3 (NFA Arbitration Answers & Aff. Defenses at TSI0021-0121 (Oct. 24, 2016)).

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[6] There is a discrepancy in the evidence as to whether Faatz's total losses are $17,085.33 or $16,910.53. The difference is irrelevant because: (1) it amounts to a difference of $174.80, which is immaterial; and (2) his complaint is dismissed on other grounds.

Two years after threatening to close his account without doing so, Faatz received a communication from IBFX on July 24, 2014 noting that NFA "mandates the use of first-in first-out (FIFO) execution," and encouraging him "to evaluate [his] account and Expert Advisors to ensure that [his] current strategies adhere to the FIFO rules." Motion to Dismiss (May 11, 2017) Ex. 2 (NFA Arbitration Compl., Ex. 24). To this end, Faatz sent an email on September 8, 2014 requesting information regarding the FIFO rules' impact on his account, to which he received an email response from IBFX that same day, explaining its FIFO Rule implementation. Motion to Dismiss (May 11, 2017) Ex. 2 (NFA Arbitration Compl., Exs. 20-21); Ex. 3 (NFA Answer & Aff. Defenses at TSI0127-0128 ((Oct. 24, 2016)).

Around this same time frame, Faatz was informed by email that IBFX would no longer support his trading platform, and his account would be transferred to Forex Capital Markets, LLC (FXCM) on September 19, 2014 absent express objection. Motion to Dismiss (May 11, 2017) Ex. 2 (NFA Arbitration Compl., Ex. 23 (e-mail sent on September 5, 2014)). With regard to this transfer and as a follow up to IBFX's September 8, 2014 response to his FIFO e-mail chain, Faatz wrote:

> Why are you transferring my account to FXCM in less than two weeks? Why are you punishing my account? Why am I being targeted by your company? How am I to recover my trading losses from IBFX and Monex if I'm not allowed to continue trading with your company?

Motion to Dismiss (May 11, 2017) Ex. 3 (NFA Arbitration Answer & Aff. Defenses at TSI0127 (email sent Sept. 8, 2014) (Oct. 24, 2016)). When informed that all forex accounts trading on a particular platform were to be transferred to FXCM unless the customer specifically opted out, Faatz replied: "I reserve the legal right to file

individual and possible joint class action with the CFTC and NFA against IBFX and Monex as a direct and indirect result of trading losses to my account beginning in November, 2010 to transfer date to FXCM." *Id.* Faatz sent this e-mail on September 8, 2014. IBFX affirmed that it was his right to do so and thanked him for his business, and Faatz replied "Thanks for your honest and respected answers, not just Septembers responses, but the months and years prior of answers to my questions." *Id.* (Sept. 9, 2014).

Notwithstanding Faatz's questions to IBFX regarding the FIFO regulations implementation and his questions regarding his account transfer, Faatz never objected and his account was transferred. On October 17, 2014, Faatz received his final IBFX statement, which detailed $17,058 in total losses in connection with his IBFX trading account. *See* Motion to Dismiss (May 11, 2017) Ex. 2 (NFA Arbitration Compl. Ex. 22 (October 17, 2014 e-mail from IBFX to Faatz)). He brought his NOI before NFA on September 7, 2016, and his Reparations Complaint on September 15, 2016.

II. Legal Analysis and Conclusions

In their Motion to Dismiss, Respondents argue that: (1) Faatz cannot sue TSI and TSG solely because of their corporate affiliation with the alleged bad actors (Interbank and IBFX); and (2) principles of collateral estoppel and res judicata bar this Office from finding that Faatz's claim was timely filed because NFA found otherwise. I independently find that Faatz's claims are time barred. In the alternative, I find that Faatz's suit against TSI and TSG is an unsustainable

pretext for relitigating claims already pursued against the real Respondents in question—IBFX and Interbank. Accordingly, Faatz's Reparations Complaint is dismissed with prejudice.

A. Statute of Limitations and Tolling

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. §18(a)(1); *McGough v. Bradford, et al.*, 2000 WL 33675749 at *13, [1999-2000 Transfer Binder] Comm. Fut. L. Rep.¶28,265 at 4252-4253 (CFTC Sept. 28, 2000) (citing *Edwards v. Balfour Maclaine Futures, Inc.*, 1994 WL 267438 at *1, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,108 at 41,665 (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.

The determination of when a cause of action accrues turns on when a customer discovers those facts enabling him to detect a general illegal scheme, rather than when the customer grasps the full details of the scheme or determines the available legal remedies. *See, e.g., Cook v. Monex International, Ltd.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. ¶22,532 (CFTC Mar. 19, 1985),

reconsideration denied [1986-1987 Transfer Binder] Comm. Fut. L. Rep. ¶23,078 (CFTC May 20, 1986); *Martin v. Shearson Lehman/American Express, Inc.*, 1986 WL 65939, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. ¶23,354 (CFTC Nov. 12, 1986); *Marracinni v. ContiCommodity Services, Inc.*, 1987 WL 106885, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. ¶23,793 (CFTC Aug. 20, 1987).

Faatz states that he "was not aware of [his] total loss, until [he] was provided a Statement of Loss on September 19, 2014, when [his] account was closed." Opp. To Motion to Dismiss at 2 (May 11, 2017). He therefore argues that September 19, 2014 is his accrual date.

However, the dispositive question is not when Faatz became aware of his "total loss," but when he could detect a general illegal scheme. *See Fox v. First National Monetary Corp.*, 1986 WL 65776 at *8 (Initial Decision), *aff'd* 1987 WL 106864 at *4, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,094 at 32,244 (Initial Decision Jun. 12, 1986), *re-aff'd* [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,690 at 33,779 (CFTC June. 23, 1987). This detection point starts the clock running on the statute of limitations, and it could happen well before a claimant knows the full extent of his losses. *See Pon Lee v. Thomas John Lee, et al.,* 2007 WL 776613 at *2, [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶30,478 at 59,351 (CFTC Mar. 13, 2007) (holding that complainant need not flesh out details of malfeasance or available legal remedies before claim accrues).

It is clear here that Faatz knew of the potential misconduct as of April 26, 2012. That was the date on which he sent an email to IBFX, followed by a second

one on May 6, 2012, regarding his losses and making clear that he believed these losses were due to IBFX's misconduct, since its acquisition by TSG made it, in Faatz's estimation, "far more difficult to be a customer and trade profitably." Motion to Dismiss (May 11, 2017) Ex. 4 (NFA Arbitration Motion to Dismiss Ex. A). He informed IBFX in the email on May 6, 2012, that he would be closing his account and filing a formal complaint against his losses. Motion to Dismiss (May 11, 2017) Ex. 4 (NFA Arbitration Motion to Dismiss Ex. B). But he never did either of those things, and instead, continued trading his forex account until October 2014. Because his claim accrued on April 26, 2012, his limitations period expired on April 26, 2014 and his Reparations Complaint was filed two-and-a-half years too late. *Kodras v. 20/20 Trading Co. Man Financial, Inc., et al.*, 2009 WL 2005127 at *3-4, [2009-2011 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶31,385 at 62,952-62,953 (CFTC Jul. 8, 2009) (dismissing complainant because he failed to timely file after speaking with broker about losses and the alleged misconduct).

No new claims accrued after April 26, 2012 that would restart his limitations clock. Faatz claims that Respondents violated NFA and Commission FIFO and conflict of interest rules from 2011 through 2014. Reparations Compl. And in fact, on September 8, 2014, he informed IBFX that he would be filing a complaint due to "trading losses to my account beginning in November, 2010 to transfer date to FXCM." Motion to Dismiss (May 11, 2017) Ex. 3 (NFA Arbitration Answer & Aff. Defenses at TSI0127 (Oct. 24, 2016)). In other words, according to his allegations, one course of misconduct applies across his claims period, so his 2014 claims are

based on the same alleged violations as his 2011 claims. Moreover, as this chart illustrates, the vast majority of his total losses came in 2012.

Year	Profit or (Loss)
2010	($27.39)
2011	$9,689.82
2012	($25,872.90)
2013	$244.36
2014	($944.42)
Total Profit or (Loss)	($16,901.53)

Motion to Dismiss (May 11, 2017) Ex. 3 (NFA Arbitration Answer & Aff. Defenses at 6 (Oct. 24, 2016)). This is the very year he complained about his losses. The totality of his claim, spanning at least three years, accrued on April 26, 2016, making his Reparations Complaint untimely.[7]

B. TSI and TSG Are Not the Proper Parties

I find, in the alternative and as an independent basis to dismiss Faatz's complaint, that his suit against TSI and TSG is nothing more than a pretext for relitigating claims against his forex dealer, Interbank/IBFX. But because he is precluded from bringing a reparations claim against Interbank/IBFX, he cannot recover here against their corporate affiliates.

Faatz's claims are against Interbank/IBFX, his forex dealer, for violations of the FIFO and conflict of interest rules. Reparations Compl.; Second Compl. Addendum at 2. The FIFO rules only apply to entities that acted as a customer's forex dealer. *See* NFA Rule 2-43(b). And Faatz does not allege that any entity other

[7] Even if I assume that he was not on notice of the misconduct in 2012 but was not aware of it until September 8, 2014, when he informed IBFX that he would be filing a complaint for the losses he incurred from 2010 through September 2014, his Reparations Complaint was not filed until September 15, 2016. This is one week after his two-year statute of limitations expired based on a September 8, 2014 accrual date.

than Interbank/IBFX acted as his forex dealer. Thus, without something more, they cannot be pleaded against TSI and TSG.

The same is true for the conflict of interest allegations. Faatz alleges that "Their company maintained its conflict of interest by acting as the forex market maker and forex broker." Reparations Compl. Attachment (Division of Enforcement Complaint Form) (capitalization omitted). But without some specific allegations against TSI and TSG, those allegations apply only to his forex dealer—Interbank/IBFX.[8]

Thus the real parties in interest are Interbank and IBFX, not TSI and TSG. But Faatz could not file a reparations complaint against Interbank/IBFX because he was in parallel proceedings against them before NFA, and Commission regulations prohibit bringing reparations claims when an arbitration or civil court proceeding is pending at the time the reparations complaint is pending. Commission Rule 12.24(a)(1)(i), 17 C.F.R. 12.24(a)(1)(i); *see also Duhaiby v. Shearson Lehman Hutton*, 1990 WL 282938 at *1, [1990-1992 Transfer Binder] Comm. Fut. L. Rep.

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[8] Faatz's conflict of interest allegations—even if brought against the proper parties—would fail as a matter of law. Pursuant to Commission Regulation 17 C.F.R. § 5.5(b), Faatz's Customer Agreement with Interbank/IBFX discloses that: "Your dealer is your trading partner which is a direct conflict of interest." Motion to Dismiss (May 11, 2017) Ex. 3 (NFA Answer & Aff. Defenses at TSI0003 (Customer Agreement) (Oct. 24, 2016)) (emphasis added) (capitalization omitted). The Customer Agreement further stated, again pursuant to Commission Regulation, "You are limited to your dealer to offset or liquidate any positions since the transactions are not made on an exchange or market, and your dealer may set its own prices." *Id.* (capitalization omitted). The conflict of interest is therefore recognized under the Commission's regulations, and addressed by ensuring adequate disclosure. Interbank/IBFX complied with the disclosure requirements, and thus these conflict of interest allegations fail to state a claim as a matter of law. *Bloch v. Quantum Fin. Servs. Inc.*, CFTC Dkt. No. 93-R199, 1994 WL 167747 (CFTC May 2, 1994) (dismissing complaint for failure to state a claim under the CEA).

(CCH) ¶24,839 at 36,965 (Apr. 23, 1990) (considering arbitration proceeding is considered pending once NOI filed).[9] Faatz attempts to circumvent this prohibition against filing the same claims against the same parties in a different forum by naming their corporate affiliates instead.

However, these affiliates bear no factual relationship to the alleged misconduct at issue. Although TSI is a registered futures commission merchant, there is no record of Faatz having an account with TSI or any other dealings with TSI. Moreover, TSI has no relationship with Faatz's forex dealer, Interbank/IBFX, except that it shares a registered Principal, TSG, in common with them. This sibling-affiliate relationship is insufficient to confer any liability onto TSI, particularly where Complainant has not alleged "any direct connection between himself and" TSI. *King v. First London Commodity, Ltd.*, CFTC Dkt. No. R77-216, 1984 WL 48209, at *1 (CFTC May 25, 1984). Simply stating that TSI was "directly involved," *see* Jan. 16, 2017 (received January 24, 2017) Faatz Letter Response to Jan. 6, 2017 Third Deficiency Letter, without any description of what constitutes that direct involvement is plainly insufficient. *Beck v. Jonasson*, CFTC Dkt. No. 08-R027, 2009 WL 290970, at *2-3 (CFTC Feb. 4, 2009) (noting that allegations "must be sufficiently clear and specific" and claimants "must plead facts that allow us to infer a legally cognizable claim").

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[9] Faatz conceded this when he dropped his forex dealers from the Reparations Complaint after this Office informed him that he either had to drop the NFA Arbitration against Interbank/IBFX, or drop them from the Reparations Complaint. *See* Office of Proceedings Third Deficiency Letter (Jan. 6, 2017); *see also* Office of Proceedings Letter re NFA Arbitration and Damages (March 2, 2017).

Although TSG is a registered Principal of Interbank/IBFX, there are no allegations made against it specifically. "Absent a showing of personal involvement in the alleged violations, the Commission has consistently refused to impose liability on a corporate officer or shareholder for the corporation's misdeeds, whether as an 'alter ego', by 'piercing the corporation veil,' or otherwise. *Hwang v. Bull Market Commodities, Inc.*, CFTC Dkt. No. 82-R505, 1987 WL 106866 at *2 (CFTC July 7, 1987) (collecting cases). Even when presented with a "closely held" corporation held entirely by one person, the Commission has preferred to allow federal courts, in the enforcement phase of an award, to decide whether to disregard the corporate form and impose liability for the reward against corporate officers or shareholders. *Id.* This is especially true when, as here, "no allegations were made concerning any involvement by [Respondent] in the alleged" wrongdoing. *Id.; see also Beck*, 2009 WL 290970 at *2-3 (dismissing complaint where "the specific facts pleaded by the complainant tend to implicate solely a non-party."). Thus without obtaining a judgment against the actual alleged wrongdoers in question—Interbank and IBFX—the question of what damages amount TSG can be liable does not arise.

Faatz has made no allegations demonstrating that TSI and TSG were involved with the alleged misconduct. Faatz cannot pierce the corporate veil here, where he cannot sue the real parties in interest by virtue of the parallel proceedings prohibition, and the claims against them must be DISMISSED.

C. Attorneys' Fees

Respondents request reasonable attorneys' fees in defense of this claim. Motion to Dismiss at 9-10 (May 11, 2017). Although this Office is authorized to award attorneys' fees and costs in the defense of a claim made in bad faith, *see Sherwood v. Madda Trading Co.,* 1979 WL 11487 at *8-9 n.26, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶20,728 at 20,023 n.26 (CFTC Jan. 5, 1979), I elect not to do so here. The dismissal of Faatz's Complaint is sufficient, although any further litigation in this regard may not be subject to the same leniency by this Office. Respondents' request for attorneys' fees is DENIED.

CONCLUSION

Faatz's statute of limitations expired on April 26, 2014, and his Complaint filed on September 15, 2016 far exceeds the two-year statutory deadline. This alone is sufficient for dismissal. In the alternative, Faatz cannot sue the corporate affiliates of his forex dealers simply because he did not like the outcome of a prior proceeding based on the same facts brought against the actual alleged wrongdoers.

Respondents' Motion to Dismiss is hereby GRANTED, and the Complaint is DISMISSED.

Dated: April 20, 2018

Kavita Kumar Puri,
Judgment Officer

Appendix A:

CFTC Appointment Order

(dated April 9, 2018)

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In re:	)	**RATIFICATION AND**
Pending Administrative Proceedings	)	**RECONSIDERATION**
	)	**ORDER**

On November 29, 2017, the Solicitor General on behalf of the United States submitted a brief in *Raymond J. Lucia and Raymond J. Lucia Companies, Inc. v. Securities and Exchange Commission* (No. 17-130) in which the Solicitor General agreed with the petitioners that the U.S. Supreme Court should decide whether administrative law judges of the Securities and Exchange Commission ("SEC") are Inferior Officers under the Appointments Clause, U.S. Const. art. II, § 2, cl. 2. The Solicitor General took the position that SEC administrative law judges are Inferior Officers for purposes of the Appointments Clause but recommended that the Supreme Court appoint an amicus curiae to defend the contrary judgment of the Court of Appeals for the District of Columbia Circuit.

The Commission employs no administrative law judges. The Commission does employ a Judgment Officer, but makes no determination about whether the Judgment Officer is akin to an SEC administrative law judge for purposes of the Appointments Clause. Nevertheless, the Commission—in its capacity as head of a department—hereby ratifies the agency's prior appointment of Judgment Officer Kavita Kumar Puri.

In addition, the Commission orders the Judgment Officer, in proceedings now pending before her, to undertake the following actions in each of those proceedings:

- Reconsider the record, including all substantive and procedural actions taken;

- Issue an order granting parties until April 25, 2018, to submit any new evidence the parties deem relevant to the Judgment Officer's reexamination of the record;

- Determine, based on such reconsideration, whether to ratify or revise in any respect all prior actions taken by the Judgment Officer in the proceeding; and

- By June 8, 2018, issue an order in each case stating that the Judgment Officer has completed the reconsideration ordered above and setting forth a determination regarding ratification.

The Commission hereby tolls the time periods in Part 12 of the Commission's Regulations until the Judgment Officer issues the order on ratification. The Judgment Officer is directed to notify the parties in the cases pending before them of this order.

In matters pending before the Commission in which the Judgment Officer has issued a decision, the Commission hereby remands such matters to the Judgment Officer. A list of matters is attached as Exhibit A to this Order. The Judgment Officer is ordered to undertake the following actions in each of those proceedings:

• Reconsider the record, including all substantive and procedural actions taken by the Judgment Officer;

• Issue an order granting parties until April 25, 2018, to submit any new evidence the parties deem relevant to the Judgment Officer's reexamination of the record;

• Determine, based on such reconsideration, whether to ratify or revise in any respect all prior actions taken by the Judgment Officer in the proceeding; and

• By June 8, 2018, issue an order in each case stating that the Judgment Officer has completed the reconsideration ordered above and setting forth the determination regarding ratification.

The Judgment Officer may, for good cause shown, modify these deadlines, including the date by which the Judgment Officer's order on ratification is to be issued.

IT IS SO ORDERED.

By the Commission (Chairman GIANCARLO and Commissioners QUINTENZ and BEHNAM).

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: April 6, 2018

Exhibit A
to the Commission's Ratification and Reconsideration Order

- *Ronald S. Draper v. Main Street Trading, Incorporated, Wedbush Securities, Incorporated, KCG Americas LLC, and Patrick J. Flynn*, **No. 16-R003**

- *Suntex Corporation v. Jacob Michael Hinkle, John William Sendlosky, and Trade Station Securities, Incorporated*, **No. 16-R006**