



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

BRETT KANDELL, Derivatively on Behalf  
of Nominal Defendant, FXCM, Inc.,

Plaintiff,

vs.

DROR NIV, WILLIAM AHDOUT,  
KENNETH GROSSMAN, DAVID  
SAKHAI, EDUARD YUSUPOV, JAMES  
G. BROWN, ROBIN DAVIS, PERRY  
FISH, ARTHUR GRUEN, ERIC LEGOFF,  
and RYAN SILVERMAN,

Defendants,

and

FXCM, INC.,

Nominal Defendant.

C.A. No.

**VERIFIED CLASS ACTION AND DERIVATIVE COMPLAINT**

YOU ARE IN POSSESSION OF A CONFIDENTIAL FILING FROM THE  
COURT OF CHANCERY OF THE STATE OF DELAWARE

If you are not authorized by Court Order to view or retrieve this document,  
read no further than this page. You should immediately contact the  
following person(s):

Peter B. Andrews (#4623)

Craig J. Springer (#5529)

David M. Sborz (#6203)

**ANDREWS & SPRINGER LLC**

3801 Kennett Pike

Building C, Suite 305

Wilmington, DE 19807

(302) 504-4957

*Attorneys for Plaintiffs*

**A PUBLIC VERSION OF THIS DOCUMENT WILL BE FILED ON  
OR BEFORE DECEMBER 18, 2015.**

## **VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT**

Plaintiff, Brett Kandell, brings this action derivatively on behalf of nominal defendant FXCM, Inc. (“FXCM” or the “Company”), and makes the following allegations upon personal knowledge with regard to himself and his own acts and upon information and belief as to all other matters. Based on the allegations in this Verified Shareholder Derivative Complaint (the “Complaint”), Plaintiff asserts derivative claims for breach of fiduciary duty against Dror Niv, William Ahdout, Kenneth Grossman, David Sakhai, Eduard Yusupov, James G. Brown, Robin Davis, Perry Fish, Arthur Gruen, Eric LeGoff, and Ryan Silverman (collectively, the “Individual Defendants” or “Director Defendants”) on behalf of FXCM.

### **I. NATURE OF THE ACTION**

1. This derivative action arises out of the decision by FXCM’s Board to enter into a loan with Leucadia National Corporation (“Leucadia”) on terms so incredibly advantageous to Leucadia that no properly functioning board would have ever agreed to such a deal. The transaction, which was hastily assembled after FXCM suffered sizeable losses due in large part to its

own reckless policies, effectively transferred ownership of the Company from FXCM's shareholders to Leucadia. The two-year term loan (the "Leucadia Loan") has an interest rate topping out at 20.5%, contains a highly unfavorable schedule of value sharing between FXCM and Leucadia upon the disposition of assets and dividends, and allows Leucadia to force a sale of the Company within three years. Based on FXCM's market cap the day before the loan was entered into, analysts have estimated that essentially all of FXCM's value will be forfeited to Leucadia.

2. FXCM's Board, which approved the Leucadia Loan on January 16, 2015, is dominated by Company insiders. Of the Company's eleven directors, five are executives and co-founders of the firm, including the Company's CEO, COO, Chief Dealer, and Global Head of Dealing. Additionally, several of the remaining purportedly outside directors are beholden to the Company and its executives, rendering a majority of the Board conflicted.

3. On January 15, 2015, FXCM, a company solely focused on foreign exchange trading, was caught off-guard when the Swiss National

Bank announced it was ending its policy of pegging its currency, the Swiss franc, to the euro. The announcement caused a sudden rise in the value of the Swiss franc, which appreciated 18% against the euro over the course of the day. FXCM customers with positions in the euro/Swiss franc currency pair (“EUR/CHF”) suffered huge losses, generating negative equity balances owed to the Company of \$276 million. FXCM’s agency trading model, in which the Company loans its customers money to speculate with, meant that FXCM was immediately on the hook for these losses. The Company’s losses were magnified by the enormous leverage extended to its customers, with leverage of as much as 50:1 extended to U.S. customers and 200:1 for overseas customers. A prudent forex trading firm would have monitored its level of exposure to certain trading pairs and conducted stress tests to determine if the company was prepared for a sudden liquidity event. FXCM took no such measures and employed a strategy of extending massive leverage (with insufficient collateral and no hedges) while crossing its fingers and hoping that the currency markets would never suffer a high volatility event.

4. When the Company was notified by its regulators, the Commodity Futures Trading Commission (CFTC) and the National Futures Association (NFA), that it was in breach of capital requirements, FXCM was forced to seek emergency funding. In just over 24 hours, FXCM arranged a \$300 million loan with Leucadia that would allow the Company to stay in compliance with its capital requirements and continue operating. However, the process leading to the \$300 million Leucadia Loan was severely flawed, and the Board failed to act as a properly functioning board of directors should have under the circumstances. Though the Company was seeking an infusion of cash that would fundamentally transform the Company's financial structure, the Board never sought advice from an independent financial advisor or expert on the merits of the Leucadia Loan or on any other debt financing alternatives. The Board, in a frenzied and hasty fashion, failed to sufficiently explore other alternatives and allowed the Company's CEO, Drew Niv, to dominate the process, with the Board simply rubber-stamping his decisions. Most egregiously, a special committee of non-conflicted directors was never formed to guide the process or to ultimately vote on the approval

of the Leucadia Loan. Because the transaction's approval was not cleansed by a majority vote of non-conflicted directors, the Board's actions in connection with the Leucadia Loan are not afforded the benefit of the business judgment rule. Tellingly, certain insiders were more concerned with getting a piece of the action by investing in an FXCM bailout themselves rather than looking out for all FXCM shareholders.

5. The fallout from the Leucadia Loan was severe. On the first full trading day after the details of the Leucadia Loan were announced, FXCM's stock fell 87%. Additionally, the Company has been forced to sell valuable subsidiaries to service the Leucadia Loan debt, further harming FXCM's future prospects.

6. To add insult to the Company's and the shareholders' injuries, on March 11, 2015, the executives who oversaw this enormous value destruction were awarded lucrative severance agreements and restructured bonus plans.<sup>1</sup> The amended severance and bonus plans were wholly

---

<sup>1</sup> The executives that were parties to these severance agreements are defendants Drew Niv, David Sakhai, William Ahdout, and Eduard Yusupov, who are all also directors of the Company. These same executives, along

unnecessary and wasteful of the little funds FXCM has remaining. The bonus plans egregiously award management payments based on paying back Leucadia in a timely fashion, something that should require no incentive and is already laid out in the terms of the Leucadia Loan. As the Board and the Compensation Committee of the Board were fully aware, the severance agreements are much more likely to be triggered since the Company is more likely to be sold as a result of the Leucadia Loan. These additional potential payments represent unearned windfalls for these executives and are a transparent way for management to continue to pay themselves in largesse despite their failings. This litigation seeks redress on behalf of FXCM so that the Board of Directors who approved the Leucadia Loan and the executives' amended severance agreements and bonus plans are held responsible for the severe damages they have inflicted on the Company.

---

with FXCM's CFO Robert Lande, are also entitled to the bonus plans discussed herein.



## **II. JURISDICTION**

7. This Court has jurisdiction over this action pursuant to 10 Del. C. § 341.

8. The Individual Defendants have consented to the jurisdiction of this Court pursuant to 10 Del. C. § 3114.

9. This Court has jurisdiction over FXCM pursuant to 10 Del. C. § 3111.

## **III. THE PARTIES**

10. Plaintiff is currently a holder of FXCM and has been a shareholder of FXCM at all times relevant to the claims asserted herein.

11. Nominal Defendant FXCM is an online provider of foreign exchange trading and related services. FXCM is incorporated under the laws of the state of Delaware, with its principal executive offices located at 55 Water Street, 50<sup>th</sup> Floor, New York, NY 10041. The Company is publicly traded on the New York Stock Exchange (NYSE) under the symbol “FXCM.”

12. Defendant Dror (Drew) Niv (“Niv”) has been Chairman of the Board of Directors of FXCM since the Company went public in 2010 and

served on the board of the Company's predecessor, FXCM Holdings, LLC ("Holdings") beginning in 1999. Niv has been the Chief Executive Officer of FXCM since 1999 and is one of the original founding partners of the Company.

13. Defendant William Ahdout ("Ahdout") has served as a member of the Company's Board since the Company went public in 2010 and served on the board of Holdings beginning in 1999. Ahdout is FXCM's Chief Dealer and is a Managing Director and one of the original founding partners of the Company.

14. Defendant Kenneth Grossman ("Grossman") has served as a member of the Company's Board since the Company went public in 2010 and served on the board of Holdings beginning in 1999. Grossman is a Managing Director and is one of the original founding partners of the Company.

15. Defendant David Sakhai ("Sakhai") has served as a member of the Company's Board since the Company went public in 2010 and served on the board of Holdings beginning in 1999. Sakhai is FXCM's Chief Operating Officer and is one of the original founding partners of the Company.

16. Defendant Eduard Yusupov (“Yusupov”) has served as a member of the Company’s Board since the Company went public in 2010 and served on the board of Holdings beginning in 1999. Yusupov is FXCM’s Global Head of Dealing and is a Managing Director and one of the original founding partners of the Company.

17. James G. Brown (“Brown”) has served as a member of the Company’s Board since the Company went public in 2010 and served on the board of Holdings beginning in 2008. Brown is the Presiding Independent Director and is a member of the Board’s Audit Committee, Compensation Committee, and Corporate Governance and Nominating Committee.

18. Robin Davis (“Davis”) has served as a member of the Company’s Board since the Company went public in 2010. Davis is a member of the Board’s Audit Committee.

19. Perry Fish (“Fish”) has served as a member of the Company’s Board since the Company went public in 2010. Fish is the Chair of the Board’s Compensation Committee and a member of the Corporate Governance and Nominating Committee.

20. Arthur Gruen (“Gruen”) has served as a member of the Company’s Board since the Company went public in 2010. Gruen is a member of the Board’s Audit Committee and Compensation Committee.

21. Eric LeGoff (“LeGoff”) has served as a member of the Company’s Board since the Company went public in 2010.

22. Ryan Silverman (“Silverman”) has served as a member of the Company’s Board since the Company went public in 2010. Silverman is Chair of the Board’s Corporate Governance and Nominating Committee.

23. Defendants Niv, Ahdout, Grossman, Sakhai, Yusupov, Brown, Davis, Fish, Gruen, LeGoff, and Silverman are collectively referred to herein as the “Individual Defendants.”

24. According to the Company’s 2014 annual proxy, filed with the SEC on Form DEF 14A on April 30, 2014 (the “2014 Annual Proxy”), the Individual Defendants collectively controlled 29.9% of the voting power (24,477,098 shares) of the Company as of April 15, 2014.

25. The Individual Defendants, as directors of the Company, are in a fiduciary relationship with the Company and the public stockholders of

FXCM, and owe the highest obligations of loyalty and care to the Company and its stockholders.

#### **IV. SUBSTANTIVE ALLEGATIONS**

##### **A. Background of FXCM**

26. Founded in 1999, FXCM provides online foreign exchange (commonly referred to as “forex” or “FX”) trading services to nearly 200,000 customers globally. The Company operates in two main segments: retail trading, in which its customers are individual investors trading on their own personal accounts, and institutional trading, where the Company offers foreign exchange trading services to banks, hedge funds and other institutional customers. Retail trading is the main source of FXCM’s profits, with 76.6% of its 2014 trading revenues derived from retail and 23.4% from institutional customers. FXCM is the largest U.S. forex broker for individual investors.

27. In terms of the volume of trading, the foreign exchange market is the largest market in the world.<sup>2</sup> Before the widespread use of the Internet,

---

<sup>2</sup> As one example of the size of this market, in just the third quarter of its 2014 fiscal year, FXCM handled \$1.4 trillion of trades for individual investors

forex trading was the domain of large financial institutions, corporations, central banks, hedge funds, and wealthy individuals. While the main participants in the forex market are still large international banks, online trading has allowed retail investors to enter this market through online brokerage accounts with providers like FXCM.

28. Because daily currency fluctuations are usually very small, foreign exchange is one of the least volatile financial markets. In order to increase the value of potential currency movements, many currency traders rely on the availability of enormous leverage. In the U.S., the CFTC limits leverage to 50:1.<sup>3</sup> Overseas, however, regulators allow leverage of as much as 200:1. Not coincidentally, approximately 87% of FXCM's retail customer trading volume was derived from customers residing outside of the U.S., according to FXCM's most recent Form 10-K filed with the SEC on March 16, 2015 (the "March 16, 2015 10-K"). Without the use of high amounts of leverage, it is unlikely that a retail market for forex trading would exist. The

---

<sup>3</sup> In contrast, investors buying stock with borrowed money must put up at least 50% of the purchase price under Federal Reserve rules.

fact that individual currency traders are enticed by the chance to control large positions with little money down has been overtly acknowledged by FXCM CEO Drew Niv. In remarks appearing in *Bloomberg Markets* magazine's December 2014 issue, Niv stated, "Currencies don't move that much. So if you had no leverage, nobody would trade."

29. Though retail investors have entered forex trading in increasing numbers, those investors' returns have been far from impressive. According to disclosures mandated by the CFTC, in the first and second quarters of fiscal year 2014, the percentage of losing accounts at FXCM was 67%. That figure climbed to 68% in the third quarter and 70% in the fourth quarter. "For most retail investors, trading currencies through brokerages like FXCM is a fool's game," stated a January 20, 2015 article in Bloomberg News.

30. FXCM specializes in the trading of currency pairs, in which a customer buys one currency and simultaneously sells another. Through its online trading platform, FXCM presents its customers with what it purports to be the best price quotations on up to 59 currency pairs from FX market makers such as global banks, financial institutions, and others.

31. The Company primarily offers its customers what it refers to as an agency model to execute trades. As stated on page one of FXCM's March 17, 2014 10-K (the "March 17, 2014 10-K"):

Our agency model is fundamental to our core business philosophy because we believe that it aligns our interests with those of our customers and *reduces our risks*.<sup>4</sup> In the agency model, when our customer executes a trade on the best price quotation offered by our FX market makers, we act as a credit intermediary, or *riskless principal*, simultaneously entering into offsetting trades with both the customer and the FX market maker. We earn trading fees and commissions by adding a markup to the price provided by the FX market makers.

The Company's 10-Ks even go so far as to state that FXCM's exposure to market risk has been eliminated, stating, "This agency model has the effect of automatically hedging our positions and *eliminating market risk exposure*."<sup>5</sup> Though FXCM represents that the agency model rendered it a "riskless principal," in practice, its business model was much riskier than advertised. In fact, the Company's policy of extending massive amounts of leverage to its customers and allowing those customers to take sizeable long positions on the

---

<sup>4</sup> Emphasis has been added unless otherwise indicated.

<sup>5</sup> March 17, 2014 10-K at 73.



EUR/CHF currency pair — without hedges to counterbalance that risk — served to magnify the Company’s risk.

32. The Company offers customers a number of trading systems, which are supported by its purported “sophisticated, proprietary technology infrastructure.”<sup>6</sup> FXCM’s trading platforms track the balances, positions, profits and losses and margin levels for all account holders in real time. The Company’s 10-Ks also promote FXCM’s margin-watcher feature, which “automatically closes out open positions if a customer’s account is at risk of going into a negative balance as a result of a trading position losing value and reaching the minimum margin threshold.”<sup>7</sup> Thus, according to FXCM:

*Exposure to credit risk from customers is therefore minimal.*

While it is possible for a retail customer account to go negative in rare circumstances, for example, due to system failure, a final stop loss on the account is automatically triggered which will execute the closing of all positions. For the years ended December 31, 2013 and 2012, we incurred \$1.3 million and \$0.3 million, respectively, in losses from customer accounts that had gone negative.<sup>8</sup>

---

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 78.

In the event that market conditions do not allow FXCM to close out its customers positions at a level where margin posted by the customer is sufficient to cover the customer's losses, a customer may suffer losses in excess of their margin. In these cases, FXCM's stated policy is "generally not to pursue claims for negative equity against our customers."<sup>9</sup>

33. In the wake of the 2008 financial crisis, when heavy leverage contributed to massive losses for retail traders and major financial institutions (a major factor in the fall of Lehman Brothers), regulators sought to rein in leverage rates. In 2010, the CFTC attempted to pass a rule lowering leverage ratios for retail forex investors to 10:1. Facing pressure from FXCM and other forex brokers, the regulator was unsuccessful in passing the rule. In a March 2010 letter to the CFTC, Niv wrote that the agency's proposal would "have a devastating impact on the retail forex industry." Niv argued that the industry relies on "electronic systems" to liquidate customer trades and protect against "currency fluctuations in the market." FXCM's opposition to these leverage limits would come back to haunt the Company in 2015.

---

<sup>9</sup> *Id.* at 11.

34. FXCM has been sanctioned for internal oversight lapses in the past. In 2011, the Company agreed to pay more than \$14.2 million to settle CFTC and NFA claims that it had failed to properly supervise over 57,000 customer accounts trading on its forex platforms. According to the CFTC, FXCM failed to protect its customers from price fluctuations which occurred between the time an order was placed and when it was executed. FXCM was required to pay back \$8.26 million to customers as part of the penalty.

**B. The Swiss National Bank Discontinues its Policy of Pegging the Swiss Franc to the Euro**

35. Beginning in 2011, the Swiss National Bank instituted a policy pegging its currency, the Swiss franc, to the euro, announcing that it would not allow the franc to appreciate beyond the level of 1.2 euros per franc. The policy was instituted during the Eurozone debt crisis in 2011, when, in response to a weakening euro and fears of the euro's ongoing viability as a common currency, an influx of money flowed into Switzerland, creating upward pressure on the Swiss franc. After introducing the currency cap in September 2011, the Swiss National Bank spent billions defending it by creating new francs and using them to buy euros.

36. Because of this policy, the EUR/CHF (euro/Swiss franc) trading pair appeared stable for many years. In the months leading up to the events of January 15, 2015, FXCM continually promoted trading in the EUR/CHF pair in its Company-owned forex news website DailyFX.com and in online videos posted on FXCM's website. FXCM's promotion of the EUR/CHF pair may explain why the Company's exposure to this currency pair was much higher than other brokers' exposure.

37. In early 2015, the European Central Bank was on the verge of embarking on an extensive effort to stimulate the Eurozone economy by pumping in money through bond purchases (known as quantitative easing), creating downward pressure on the euro. The Swiss National Bank knew this policy would further devalue the franc against other currencies while simultaneously costing the country billions to maintain the peg. In response, a week before the European Central Bank met to discuss the government bond purchases, the Swiss National Bank announced on January 15, 2015 that it would allow its currency to float freely against the euro.

38. The value of the Swiss franc rose rapidly after the announcement, at one point up more than 41% against the euro, eventually settling at an 18% rise over the course of the day. This volatility led to an instant loss of liquidity in forex markets. Of the approximately 20 market makers that FXCM deals with to execute retail customer trades, virtually all of them stopped making markets in the EUR/CHF pair in the minutes after the event, which meant that FXCM had little ability to execute client stop orders or margin calls until about 45 minutes later. By that time, customers on the wrong side of the EUR/CHF pair had locked in significant losses. With the loss of liquidity, FXCM's margin watcher feature was unable to close out many of these customers' positions in time to prevent negative balances, and their clients' use of leverage multiplied these losses. Based on FXCM's representations that its agency model rendered it a "riskless principal," the Company's shareholders should have been confident that any losses resulting from the move in the EUR/CHF currency pair would be borne by the Company's customers and not the Company. Unfortunately for the shareholders and the Company, this was not the case.

39. After hours on January 15, 2015, FXCM issued a press release stating that “clients experienced significant losses” as a result of the Swiss franc’s movement, generating “*negative equity balances owed to FXCM of approximately \$225 million.*”<sup>10</sup> The Company also announced that it was potentially in breach of certain regulatory capital requirements as a result of those debit balances and that it was “actively discussing alternatives to return our capital to levels prior to today's events and discussing the matter with our regulators.”

40. This announcement shed light on FXCM’s shocking lack of internal controls, as FXCM’s reckless extension of leverage to customers on one side of the EUR/CHF pair threatened the Company’s very survival. A prudent forex trading firm would have monitored its level of exposure to certain trading pairs and conducted stress tests to determine if the company was prepared for a sudden liquidity event. In the event that the company was heavily exposed to certain pairs, it should have reduced the leverage it extended to customers and required additional collateral from those

---

<sup>10</sup> FXCM later revised this figure upward to \$276 million.

customers. FXCM took no such measures, happy to continue collecting commissions from its customers and hopeful that the currency markets would remain stable.

41. The announcement of these staggering losses was a rude awakening for FXCM shareholders, who had relied on the Company's statements about its minimal levels of risk when investing in FXCM. Indeed, FXCM had assured shareholders in its 10-Ks and 10-Qs that its agency model rendered the Company a "riskless principal," or essentially a middle man executing trades for its clients, and that it was not exposed to the risks of market fluctuations. FXCM investors had also been assured by the Company's SEC filings that FXCM's margin watcher feature would automatically close out customers' open positions if those customers' accounts were at risk of going into a negative balance. Unfortunately for investors, FXCM's business model proved to be incredibly precarious, transferring the liability of their customers' risky currency bets from the customers to the Company. With the failure of the margin watcher feature to close out customer positions before going into negative balances and the

magnification of losses as a result of heavy leverage, FXCM shareholders quickly learned that the “riskless” business model they were sold was just the opposite.

42. When the Company’s regulators, the CFTC and the NFA, notified FXCM that it was in breach of capital requirements, FXCM did not have a standing line of credit in place to satisfy the regulators. Instead, the Company was actually in breach of its revolving credit agreement because certain covenants were tripped in connection with its losses stemming from the Swiss National Bank’s announcement.

43. Barely 24 hours after the Company announced these massive losses, FXCM revealed that it would be receiving \$300 million in cash in the form of a loan from Leucadia that would permit FXCM to meet its regulatory capital requirements and continue normal operations. Few details of the deal were announced at that time, other than:

- The \$300 million senior secured term loan has a two-year maturity and an initial coupon of 10%;
- The term loan obligations are guaranteed, on a secured basis, by certain of FXCM’s domestic subsidiaries;



- Leucadia will receive, in the event of a sale of FXCM or its subsidiaries, a certain percentage of the sale proceeds and, in the event FXCM makes other distributions on account of its equity, a corresponding payment for its own account.

44. When the full details of the agreement between FXCM and Leucadia (discussed in greater detail below) were announced on January 19, 2015, FXCM's share price dropped precipitously. The Company's stock dropped from \$12.63 on January 15, the last trading day before the announcement of the Leucadia Loan, to close at \$1.60 on January 20, a decline of 87% in one trading day. In all, the Company's stock dropped 89% in two trading days.

#### **C. The Flawed Process Leading to the Leucadia Loan**

45. When the Board found itself in the unenviable position on January 15, 2015 of facing \$225 million in customer losses and a potential capital shortfall, it ceased functioning as a vital overseer of the Company's affairs. Instead, the directors allowed Niv to dominate the process, and the Board operated with one goal in mind: to preserve the Company in a form that would allow the executives to keep their jobs with FXCM and allow the directors to keep their Board seats.

**1. The January 15, 2015 3:00 p.m. Board Meeting**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED], [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

47. [REDACTED]

[REDACTED] Because FXCM's general policy is to not pursue claims for negative equity against its customers, FXCM is on the hook for all of its customers' losses, essentially taking on its customers' trading risks. With the massive leverage FXCM extends to its customers — reaching levels of 200:1 — the

Company's potential losses are magnified. Thus, the purportedly "riskless" agency model is in fact incredibly risky, as demonstrated by the fact that a move in a single currency exposed the Company to financial ruin.

48. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

49. [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

50. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## 2. The January 15, 2015 9:00 p.m. Board Meeting

51.

29

THIS DOCUMENT IS CONFIDENTIAL.  
ACCESS IS PROHIBITED EXCEPT AS AUTHORIZED BY COURT  
ORDER.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

53. [REDACTED]
- [REDACTED]
- [REDACTED]

### 3. The January 16, 2015 8:30 a.m. Board Meeting

54. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
- [REDACTED] [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

55. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

56. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### 4. The January 16, 2015 11:15 a.m. Board Meeting

57.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

58.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

59. [REDACTED]

[REDACTED]

[REDACTED] Importantly, Brown is the Presiding Independent Director of FXCM, and according to the 2014 Annual Proxy, the responsibilities that come with that role are substantially similar to many of the functions typically fulfilled by a board chairman. The 2014 Annual Proxy further states that the Presiding Independent Director position “balances the need for effective and independent oversight of management with the need for strong, unified leadership.”<sup>12</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

60. Niv then expressed his opinion that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>12</sup> March 17, 2014 10-K at 73.

[REDACTED] But FXCM's rush to enter into the Leucadia Loan prevented the Board from taking a more thorough and deliberate approach to secure financing. In fact, CFTC Regulation 5.7 allows companies a ten business day extension if they can demonstrate the ability to achieve compliance with capital requirements:

[I]f such registrant immediately demonstrates to the satisfaction of the Commission or the registrant's designated self-regulatory organization the ability to achieve compliance, the Commission or the registrant's designated self-regulatory organization may in its discretion allow such registrant up to a maximum of 10 business days, or such additional time as determined by the Commission, in which to achieve compliance without having to liquidate positions or transfer accounts and cease doing business as required above.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

61. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**5. The January 16, 2015 3:00 p.m. Board Meeting**

62. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

63. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] FXCM's Board includes five insiders: Niv, the Company's CEO and co-founder; William Ahdout, the Company's Chief Dealer, a Managing Director, and a co-founder; David Sakhai, the Company's Chief Operating Officer and a co-founder; Eduard Yusupov, the Company's Global Head of Dealing, a Managing Director, and co-founder; and Kenneth Grossman, a Managing Director and co-founder. All of these Board members are also executives of the Company and are not listed as "independent" in the Company's annual proxies. As Company executives, these five men's interests were not necessarily aligned with those of the Company and the

shareholders. For example, a transaction leading to a change of control of FXCM could lead to a termination of these executives in favor of new management. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

64. Furthermore, in the Company's January 19, 2015 press release announcing details related to the Leucadia Loan, FXCM acknowledged that it received no financial advisor input on the Leucadia Loan, a transaction that would fundamentally transform the Company's financial structure. The January 19 press release states, "UBS advised FXCM in its capacity as

placement agent in exploring financing alternatives, *excluding debt financing and the debt financing provided by Leucadia.*” That FXCM would negotiate a transaction which essentially gives away the Company to Leucadia without the benefit of a financial advisor is an astonishing breach of the directors’ fiduciary duties.

**E. Wall Street’s reaction to the Leucadia Loan**

65. [REDACTED]

[REDACTED] In a press release issued on Monday, January 19, FXCM provided additional details on the financing with Leucadia. The press release stated in relevant part:

The loan has an initial interest rate of 10% per annum, increasing by 1.5% per annum each quarter for so long as it is outstanding, but in no event exceeding 17%<sup>13</sup> per annum (before giving effect to any applicable default rate). It is also subject to various conditions and terms such as requiring mandatory prepayments, including from proceeds of dispositions, condemnation and insurance proceeds, debt issuances, and equity issuances. The credit agreement includes a variety of restrictive covenants, including, but not limited to, limitations on the ability to merge, dissolve, liquidate, consolidate or sell, lease or otherwise transfer

---

<sup>13</sup> The 17% cap was later revised upward to 20.5%. Due to a drafting error, the 17% rate remained in early versions of the loan documents and was later corrected to reflect the 20.5% that was the parties’ intention.

all or substantially all assets; limitations on the incurrence of liens; limitations on the incurrence of debt by subsidiaries of the company; and limitations on transactions with affiliates, without the prior consent of the lender.

The credit agreement requires monthly payments of the term loan from proceeds received during the immediately preceding calendar month from accounts receivable related to the customer debit balances referenced above. The obligations under the loan are guaranteed by certain domestic subsidiaries of Holdings and secured by substantially all of the assets of Holdings and certain of its subsidiaries. The credit agreement also requires the borrowers to pay a deferred financing fee in an amount equal to \$10 million, with an additional fee of up to \$30 million becoming payable in the event the aggregate principal amount of the term loan outstanding on April 16, 2015 is greater than \$250 million or the deferred financing fee of \$10 million (plus interest) has not been paid on or before such date.

In connection with the financing, the parties also entered into an agreement that provides, among other things, that Newco will pay in cash to Leucadia and its assignees a percentage of the proceeds received in connection with certain transactions, including any sale of assets, any dividend or distribution or the sale or indirect sale of Newco (whether by merger, stock purchase, sale of all or substantially all of Newco's assets or otherwise). That agreement, which remains in place until the sale of Newco, allocates proceeds as follows:

Aggregate amount of sale proceeds or dividend/distributions	Leucadia	FXCM Holdings
Amounts due under Leucadia term loan, including fees	100%	0%



Next \$350 million	50%	50%
Next amount equal to 2 times the balance outstanding on the term loan and fees as of April 16, 2015, such amount not to be less than \$500 million or more than \$680 million	90%	10%
All aggregate amounts thereafter	60%	40%

In addition, FXCM, Holdings and Newco have agreed that beginning in three years and thereafter, upon the request of Leucadia or its assignees, they will cause the sale of Newco at the highest reasonably available price. Upon the occurrence of such event, Newco will pay Leucadia and its assignees in accordance with the methodology described above.

66. On its face, the Leucadia Loan so one-sidedly favors Jefferies/Leucadia that it is hard to fathom how FXCM's Board could have agreed to these terms. While a loan with an interest rate of 10% (and capping out at **20.5%**) may not technically be usurious, it is certainly questionable in today's low interest rate environment. Leucadia also charged FXCM an additional loan fee of \$21 million, an amount that exceeds the Company's entire 2014 net earnings of \$17.15 million. Further, the schedule of economic value sharing between FXCM and Jefferies/Leucadia rewards Jefferies/Leucadia far beyond what their investment in FXCM should have been worth, all to the detriment of FXCM and its shareholders. Additionally,

the Leucadia Loan has a variety of restrictive covenants, including, but not limited to, limitations on the ability to merge, dissolve, liquidate, consolidate or sell, lease or otherwise transfer all or substantially all assets; limitations on the incurrence of liens; limitations on the incurrence of debt by subsidiaries of the Company; and limitations on transactions with affiliates, without the prior consent of Leucadia. In effect, the Leucadia Loan is essentially a delayed sale of FXCM, as Leucadia has the right to demand a sale of FXCM beginning three years after the signing of the Leucadia Loan.

67. When the markets learned of the egregious terms of the Leucadia Loan, FXCM's share price plummeted. On January 15, the stock opened at \$14.44 and closed at \$12.63, and trading in FXCM shares was halted on Friday, January 16. When trading in the stock resumed on Tuesday, January 20,<sup>14</sup> shares in FXCM opened at \$1.58, falling as low as \$1.28 before closing at \$1.60. In total, over a two day span, FXCM's share price fell 89%, wiping out \$600 million in shareholder value.

---

<sup>14</sup> The markets were closed on Monday, January 19 for Martin Luther King, Jr. Day.

68. Before the details of the Leucadia Loan were announced (but after the announcement of \$225 million in customer losses), a J.P. Morgan analyst discussing FXCM's value destruction stated:

Valuation is permanently impaired at FXCM. *What was supposed to be an agency-only model with more limited risk has succumbed to risk management* and possibly technology issues. Shareholder's equity was \$641mn, less intangibles was ~ \$250mn at 3Q14. The \$225mn loss wipes much of that away.

After the details of the Leucadia Loan were announced, J.P. Morgan's opinion of FXCM was even more harsh. In a research note titled "Leucadia Extracts Vast Majority of Value of FXCM in Exchange for Rescue Package," analyst Kenneth B. Worthington summarized the terms of the Leucadia Loan and then writes:

What is left for public shareholders - very little. The terms of the deal rescue FXCM from bankruptcy, but appear to leave little value for common shareholders. At the \$1.2bn cap that FXCM was trading at prior to Thursday, Leucadia and convertible note holders retain the majority of the economics -- \$1.150bn plus, depending on FXCM's ability to meet certain payment hurdles.

Furthermore, we don't expect shareholders to pay as much for FXCM in the future with the knowledge that an agency-only business can see capital wiped out in the case of extreme volatility.

Risks for FXCM business. We see the likelihood that earnings power for FXCM comes under pressure. While Friday volumes indicate that FXCM was not under pressure from customer defections, we see the increased publicity of the FXCM financial problems driving some customers to leave FXCM, despite the financial rescue. We also see the potential for more conservative risk management might increase margin levels on certain trades to further reduce risk thus driving additional customers to trade at other firms. We also believe that regulators could take a closer look at margin requirements for retail FX trading and thus weigh on trading activity.

Citigroup analyst William Katz echoed the J.P. Morgan assessment, stating that the deal “essentially wiped out” the value of FXCM’s stock. In a January 23, 2015 research note, Katz set a \$0.75 price target for FXCM’s shares, and stated that 95% of the proceeds of any sale of FXCM (up to \$1.33 billion) would go to Leucadia, with just 5% remaining for FXCM shareholders.

69. The ripple effects on FXCM’s business resulting from the Swiss National Bank’s move and the Leucadia Loan have been enormous. In a March 13, 2015 report commenting on FXCM’s earnings for its fourth quarter 2014 (for the period ending December 31, 2014), J.P. Morgan analyst Worthington noted that the Company suffered a 38% fall in retail trading activity in the month after the incident:

Since the Swiss Franc turmoil, FXCM sees business activity slow. Activity levels have slowed for FXCM both on the institutional and retail sides in February. Retail activity levels fell in February to \$13.3bn from \$21.4bn in January. While volatility remains off trough levels, we believe there has been some lingering impact on FXCM's business and maybe the retail FX industry more broadly from the losses surrounding the Swiss Franc.

Worthington maintained his opinion that “Leucadia appears to have extracted the vast majority or nearly all of the value for common shareholders.”<sup>15</sup>

70. FXCM does not generate enough cash from its operations to pay back Leucadia within the two year time frame of the Leucadia Loan. For example, in fiscal year 2012, FXCM reported net income of \$8.96 million; in 2013, FXCM’s net income was \$14.83 million, and in 2014, its net income was \$17.15 million. Thus, FXCM has been forced to shed many of its profitable subsidiaries to pay down the Leucadia Loan. On March 13, 2015, the Company began the process of selling its stakes in three trading

---

<sup>15</sup> In a 10-Q filed by Leucadia on May 8, 2015, Leucadia valued the \$300 million loan and associated rights at \$947 million, which would more than triple the value of its \$300 million investment. The value was determined “with the assistance of a nationally recognized third-party independent valuation firm.”

businesses: FastMatch, a currency trading platform; Lucid, a market-making firm; and V3, a high-frequency trader. On March 25, 2015, FXCM announced that it had signed a definitive agreement to sell FXCM Japan to Rakuten Securities, Inc. for \$62 million. And on May 28, 2015, FXCM announced another deal with Rakuten Securities, Inc., stating that it had signed a definitive agreement to sell FXCM Asia Limited to that company for \$36 million. Additionally, on April 9, 2015, Jefferies announced its acquisition from FXCM of Faros Trading LLC, an institutional foreign exchange subsidiary.<sup>16</sup> Selling these businesses will hurt the long-term success of FXCM, lowering its earnings and decreasing its customer base. Had FXCM entered into some other form of financing rather than a two year loan — for example, equity financing, in which new stock is issued in exchange for a cash infusion — the Company would not be forced to sell these important subsidiaries.

---

<sup>16</sup> The press release announcing this transaction contains few details related to the deal, failing to even report the price Jefferies paid for Faros.

71. FXCM's losses in the wake of the Swiss franc's surge prompted a statement from Sharon Bowen, the commissioner of the CFTC. The CFTC "has an obligation to seriously consider enhancing our regulations of retail foreign exchange dealers," Bowen stated. Noting that retail foreign-exchange trading "is the least regulated part of the derivatives industry," Bowen continued, "I am concerned that lower standards are putting this industry in a precarious position and placing retail foreign exchange investors unnecessarily at risk."

72. In an acknowledgement that its existing margin policies were insufficient, and less than a week after the Swiss National Bank incident, FXCM announced that it was increasing margin requirements for global clients who trade currencies and gold. The new requirements are "consistent with the firm's most conservative margin requirements currently in place" for its U.S. customers. "FXCM's decision to increase margin requirements is in order to protect clients during extreme market volatility," the Company said in a statement. In its 10-K filed with the SEC on March 16, 2015, FXCM

summarized policy changes it was instituting as a result of the Swiss National Bank incident:

As a result of the SNB event, we have and will be making changes to the way we approach risk. The primary change will be removing currency pairs from the platform that carry significant risk due to over active manipulation by their respective government either by a floor, ceiling, peg or band. Given what happened with EUR/CHF, the industry is now looking for any potential similar issues especially given the increased geopolitical risks in Southern and Eastern Europe. We also raised or will be raising margin requirements for other pairs as well.<sup>17</sup>

FXCM removed 14 different currency pairs from their trading platforms at that time.

#### **F. The Board Adopts a Stockholder Rights Plan**

73. On January 30, 2015, just two weeks after the approval of the Leucadia Loan, the Board announced that it had adopted a Stockholder Rights Plan (the “Rights Plan”), declaring a dividend distribution of one right on each outstanding share of the Company’s Class A common stock.<sup>18</sup> FXCM’s press

---

<sup>17</sup> See March 16, 2015 10-K at 39-40.

<sup>18</sup> According to the Company’s January 30 press release:



release announced that the Rights Plan was “designed to reduce the likelihood that any person or group would gain control of the Company by open market accumulation or other coercive takeover tactics without paying a control premium for all shares.”

74. In reality, the Rights Plan was designed to further entrench FXCM’s Board and management in office by blocking any takeover efforts

---

Under the terms of the Rights Plan, rights to purchase one one-thousandth (1/1000) of a share of a new Series A Junior Participating Preferred Stock of the Company (the "Rights") at a price of \$11.20 per one one-thousandth (1/1000) of a share will be issued at the rate of one right for each outstanding share of the Company's common stock held of record on February 9, 2015. Under the terms of the Rights Plan, the Rights will initially trade together with the Company's Class A common stock and will not be exercisable. In the absence of further action by the Company's Board of Directors, the Rights will generally become exercisable and allow the holder to acquire the shares of the Company's common stock at a discounted price if (a) a person or group acquires beneficial ownership of 10% or more of the Company's outstanding common stock or (b) any person or group commences a tender or exchange offer, the consummation of which would result in such person or group acquiring beneficial ownership of 10% or more of the Company's outstanding common stock. Rights held by the person or group triggering the rights will become void and will not be exercisable.

from third parties. However, there were no perceived takeover threats by any third parties when the Board adopted the Rights Plan.

75. Without any immediate or specific takeover threat presenting itself to the Board, the Rights Plan constitutes an unreasonable and disproportionate measure adopted for the sole purpose of maintaining the Board and management's control over the Company. Prior to the adoption, there were no indications of any realistic takeover pursuits or expressions of interest from any specific third parties. Due to the absence of any apparent or specific takeover threats, the adoption of the Rights Plan falls well outside the range of reasonableness.

76. Additionally, the Rights Plan constricts the possibility of any beneficial takeover attempt, as the atypically low 10% ownership trigger serves as a substantial and unreasonable deterrent to any third party interest.<sup>19</sup> As the Leucadia Loan was already in effect, the adoption of the Rights Plan

---

<sup>19</sup> [REDACTED]  
[REDACTED]  
[REDACTED]

was merely the next step in the Board's scheme to entrench themselves and maintain their positions with the Company.

77. To this end, the Rights Plan is not in the best interest of the Company and its shareholders and constitutes a breach of the Board's fiduciary duties.

**G. FXCM's Executives are Awarded New Severance and Bonus Packages**

78. On March 17, 2015, FXCM announced that several of its top executives had entered into amended severance agreements that would better compensate these executives in the event they are terminated or the Company is sold. Specifically, Niv, Sakhai, Adhout and Yusupov each entered an "Amended and Restated Severance Agreement for Founders" which affords these executives payouts in the event of termination of employment by the Company without cause (other than due to death or disability) or by the executives for good reason. Upon termination, these executives would be entitled to: (1) two times their annual base salary on the termination date, (2) their annual target bonus (which is 200% of the executive's annual base salary), and (3) a payment equal to 24 times the required monthly premium

for COBRA medical coverage under the Company's medical plan in which he and his family participated immediately prior to termination. Under their prior severance agreements, these executives were only entitled to two times their annual base salary and the equivalent of two years of continued medical coverage. The annual base salary for each of Niv, Sakhai, Adhout and Yusupov is \$800,000.

79. As the Compensation Committee of the Board, and the Board as a whole, was fully aware when they approved the Amended and Restated Severance Agreements for Founders, the Leucadia Loan is structured such that a sale of FXCM is highly likely in the near future. Because the \$300 million loan must be paid off (with interest) in two years and FXCM's yearly net income is a small fraction of the \$300 million principal, the Company is attempting to cover the difference by selling off various subsidiaries. If these asset sales are insufficient to pay off the loan, then FXCM will be forced to sell itself. Further, the Leucadia Loan contains a provision which specifically gives Jefferies/Leucadia the right to require a sale of the Company at the end of three calendar years. If and when FXCM is sold to another party, a

termination of any or all of Niv, Sakhai, Adhout and Yusupov is increasingly likely, especially if the purchaser is a competitor.

80. With these facts in mind, the Board and/or the Compensation Committee of the Board secured a windfall for these four executives (who are also fellow directors). Had the prior severance agreements remained in place, Niv, Sakhai, Adhout and Yusupov would have been entitled to a reasonable severance of twice their base salary plus two years of medical coverage. After the Company suffered \$276 million in customer losses under the watch of these executives, the Board and/or the Compensation Committee then sweetened the severance packages without any consideration from the four executives/directors, adding an additional \$1.6 million (double their annual base salary) to *each* executive's severance package if the executive is terminated. For a cash-strapped company with enormous liabilities, this additional severance benefit is significant and material. To put this in real financial terms, if any one of these executives is terminated and his severance package is triggered, the additional \$1.6 million payment (representing the target annual bonus) is equal to 9.3% of the Company's entire 2014 net

income of \$17.15 million. If all four executives are terminated and their severance packages are triggered, the \$6.4 million in additional severance payments is equal to 37.3% of the Company's 2014 net income. The Board and/or the Compensation Committee's approval of the Amended and Restated Severance Agreement for Founders is a shocking breach of these Board members' fiduciary duties, represents a waste of corporate assets, and evidences the Board's intention of rewarding their fellow directors at the expense of this cash-strapped Company and its shareholders.

81. Not only that, the Board also approved annual incentive bonus plans (the "Annual Incentive Bonus Plans") for Niv, Sakhai, Adhout and Yusupov, along with the Company's CFO, Robert Lande, which were a substantial departure from prior bonus plans and were designed to enrich these executives who had managed the Company during a period of unprecedented value destruction for shareholders. The executives' prior bonus plan was based on three metrics: (1) customer account growth, (2) EPS (earnings per share) growth, and (3) EBITDA (earnings before interest, taxation,

depreciation, and amortization), summarized on page 18 of the 2014 Annual

Proxy as follows:

Metric	Weighting	Percentage of 20% Growth Target Attained			
		<75% (<15% Growth)	75% (15% Growth)	100% (20% Growth)	150% (30% Growth)
Customer Account Growth	25%	0%	50%	100%	200%
Adjusted Pro Forma EPS Growth	50%	0%	50%	100%	200%
Adjusted Pro Forma EBITDA Growth	25%	0%	50%	100%	200%
Payout as percentage of base salary		0%	50%	100%	200%

82. The revised bonus plan, adopted by the Board on March 11, 2015, ties each executive's bonus to EBITDA growth, repayments of the Leucadia Loan, and an "Individual Objective Portion." The Annual Incentive Bonus Plans provide as follows:

- a. For 2015:
  - i. Fifty (50%) percent of the Target Bonus (the "2015 Individual Objective Portion") shall be earned if the Participant achieves each individual objective and goal set for the Participant by the Administrator or its designee (which may be the Participant's immediate superior) for the 2015 Plan Year and communicated to the Participant in writing.

- ii. Twenty five (25%) percent of the Target Bonus (the “2015 Leucadia Loan Portion”) shall be earned if, during the 2015 Plan Year, the Company makes repayments totaling at least \$100,000,000 of Principal with respect to the loan evidenced by a credit agreement and letter agreement, each dated January 16, 2015, between the Company, FXCM Holdings, LLC, FXCM Newco, LLC and Leucadia National Corporation (the “Leucadia Loan”).
  - iii. Twenty five (25%) percent of the Target Bonus (the “2015 EBITDA Portion”) shall be earned if the Company is certified to have achieved an “ Adjusted EBITDA ” (as determined on a consolidated basis for the financial statements of the Company and its affiliates in accordance with GAAP, excluding (i) one-time items, including adjusting for the effect of EBITDA contribution of core-asset disposition, (ii) accrued bonuses under the Plan, and (iii) any expense items related to the Leucadia Loan) for the 2015 Plan Year equal to at least \$70,000,000 (the “ 2015 EBITDA Target ”).
- b. For 2016:
- i. Fifty (50%) percent of the Target Bonus (the “2016 Individual Objective Portion”) shall be earned if the Participant achieves each individual objective and goal set for the Participant by the Administrator or its designee (which may be the Participant's immediate superior) for the 2016 Plan Year and communicated to the Participant in writing.
  - ii. Twenty five (25%) percent of the Target Bonus (the “2016 Leucadia Loan Portion”) shall be earned if, prior to January 16, 2017, the Leucadia Loan is paid in-full.



- iii. Twenty five (25%) percent of the Target Bonus (the “2016 EBITDA Portion”) shall be earned if the Company is certified to have achieved an Adjusted EBITDA for the 2016 Plan Year equal to at least \$80,500,000 (the “ 2016 EBITDA Target ”).

The bonuses are based on a target amount equal to 200% of the executive’s base salary and are subject to proration.

83. The Board, based on the recommendation of the Compensation Committee, amended the Company’s Annual Incentive Bonus Plans for one reason: to make it easier for these executives and (with the exception of Lande) fellow directors to meet their targets and receive their bonuses. For example, though FXCM’s adjusted EBITDA in 2013 was approximately \$158 million and in 2014 was approximately \$107 million, under the amended Annual Incentive Bonus Plan the adjusted EBITDA target for 2015 is only \$70 million, and in 2016 is only \$80.5 million. Furthermore, 25% of the bonus is tied to repaying the Leucadia Loan, but the Board made these targets relatively simple to reach. In 2015, this target is met if the Company repays \$100 million of principal. On April 2, 2015, less than a month after the amended Annual Incentive Bonus Plans were approved, the Company announced that over \$60 million of the Leucadia Loan had been repaid, and

the Board must have been aware of the pace of these repayments. Thus, well over half of the \$100 million repayment target had been met with almost nine months remaining for the Company to reach the target payment amount of \$100 million. In 2016, the Leucadia Loan portion of the target is met if the Leucadia Loan portion is paid in full by January 16, 2017. As the terms of the Leucadia Loan already require that the loan be paid in full by that date, this target simply awards these executives for accomplishing a goal that is already contractually mandated.<sup>20</sup> Again, the Compensation Committee's recommendation of, and the Board's approval of, the Annual Incentive Bonus Plans is a breach of its fiduciary duties, evidencing the directors' intention of rewarding themselves at the expense of the Company and its shareholders and representing a waste of corporate assets.

---

<sup>20</sup> Additionally, a full 50% of the bonus is tied to the executive achieving "each individual objective and goal" set for the executive by the Company or its designee (which may be the executive's immediate superior) for the 2015 Plan Year. No additional information is provided as to these objectives and goals set for the executives, making it impossible to know if the standards for the Individual Objective Portion are reasonable.

**V. DUTIES OF THE INDIVIDUAL DEFENDANTS**

**A. Fiduciary Duties Owed to the Company**

84. By reason of their positions as officers and/or directors of FXCM and because of their ability to control the business and corporate affairs of the Company, the Individual Defendants owed FXCM and its shareholders fiduciary obligations of good faith, fair dealing, due care, and loyalty, and were and are required to use their utmost ability to control and manage the Company in a fair, just, honest, and equitable manner. The Individual Defendants were and are required to act in furtherance of the best interests of FXCM and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interest or benefit. Each director and officer of the Company owes to FXCM and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

85. The Individual Defendants, because of their positions of control and authority as directors and/or officers of FXCM, were able to and did,

directly and/or indirectly, exercise control over the wrongful acts complained of herein. Due to their positions with FXCM, each of the Individual Defendants had knowledge of material non-public information regarding the Company.

86. To discharge their duties, the Individual Defendants were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the Company. By virtue of such duties, the officers and directors of FXCM were required to, among other things:

(a) Exercise good faith to ensure that the affairs of the Company were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of their business;

(b) Exercise good faith to ensure that the Company was operated in a diligent, honest and prudent manner and complied with all applicable federal and state laws, rules, regulations and requirements, and all contractual obligations, including acting only within the scope of its legal authority;

(c) Refrain from unduly benefiting themselves and other Company insiders at the expense of the Company; and

(d) When put on notice of problems with the Company's business practices and operations, exercise good faith in taking appropriate action to correct the misconduct and prevent its recurrence.

**B. The Company's Code of Business Ethics**

87. According to the Company's Code of Business Ethics and Director, Officer & Employee Conduct (the "Code"), FXCM recognizes "that our reputation hinges on the adherence of our directors, officers and employees to the highest standards of ethical behavior and professionalism in the performance of their duties." With respect to conflicts of interest, the Code states in relevant part:

Personal conflicts of interest arise when directors, officers or employees face a choice between their personal interests (financial or otherwise) and those of the Company. Conflicts of interest may call into question the Company's integrity as a whole. Accordingly, a director, officer or employee's service to the Company may not be subordinated to personal gain and advantage. All directors, officers and employees are expected to act in the Company's best interest.

88. The Board's actions described herein, including, *inter alia*, the approval of the Leucadia Loan and the approval of the executives' amended severance and bonus plans, were undertaken not in the best interest of the Company but instead in the best interest of the individual Board members. This conduct constituted a violation of the Company's Code of Business Ethics and Director, Officer & Employee Conduct.

**C. The Company's Corporate Governance Guidelines**

89. According to FXCM's Corporate Governance Guidelines, the Individual Defendants, as members of the Board, are charged with "direct[ing] and oversee[ing] the management of the business and affairs of the Company in a manner consistent with the best interests of the Company and its stockholders." In meeting these responsibilities, the Corporate Governance Guidelines give the directors free access to independent advisors:

Access to Management and Independent Advisors. Board members shall have free access to all members of management and employees of the Company and, as necessary and appropriate, Board members may consult with independent legal, financial, accounting and other advisors, at the Company's expense, to assist in their duties to the Company and its stockholders.

90. Though the approval of the Leucadia Loan should have necessitated the retention of and consultation with an independent financial advisor, the Board failed to engage such an advisor. This failure constitutes a violation of the Company's Corporate Governance Guidelines.

**D. The Board's Compensation Committee Charter**

91. The members of the Compensation Committee are Fish, Gruen, and Brown (the "Compensation Committee Defendants"). According to the Charter of the Company's Compensation Committee of the Board of Directors, the common recurring activities of the Compensation Committee include:

1. Establish and review the overall compensation philosophy of the Company.
2. Review and approve corporate goals and objectives relevant to CEO and other executive officers' compensation, including annual performance objectives, if any.
3. Evaluate the performance of the CEO in light of such goals and objectives and, either as a committee or together with the other independent directors (as directed by the Board of Directors), determine and approve the annual salary, bonus, equity-based incentives and other benefits, direct and indirect, of the CEO based on such evaluation.

4. Review and approve or, as directed by the Board of Directors, recommend to the Board of Directors for approval, the annual salary, bonus, equity and equity-based incentives and other benefits, direct and indirect, of the other executive officers, taking into consideration input from the CEO, as appropriate.
5. In connection with executive compensation programs:
  - i. review and recommend to the full Board of Directors, or approve, new or modified executive compensation programs;
  - ii. review on a periodic basis the operations of the Company's executive compensation programs to determine whether they are effective in achieving their intended purpose(s);
  - iii. establish and periodically review policies for the administration of executive compensation programs; and
  - iv. take steps to modify any executive compensation program that yields payments and benefits that are not reasonably related to executive and corporate performance.
6. Establish and periodically review policies in the area of senior management perquisites.

\* \* \*



9. Review and make recommendations to the full Board of Directors, or approve, any employment relationships, contracts or other transactions with current or former executive officers of the Company, including consulting arrangements, employment contracts, severance or termination arrangements and loans to employees made or guaranteed by the Company and any related compensation.
10. Consider, on a periodic basis, whether risks arising from the Company's compensation policies and practices for all employees, including non-executive officers, are reasonably likely to have a material adverse effect on the Company.

92. Though the Compensation Committee is charged with modifying executive compensation programs that yield "payments and benefits that are not reasonably related to executive and corporate performance," the modification of Niv, Sakhai, Adhout and Yusupov's severance agreements and Niv, Sakhai, Adhout, Yusupov, and Lande's Annual Incentive Bonus Plans merely served to enrich these directors and executives at the expense of the Company. This conduct constitutes a violation of the Board's Compensation Committee Charter.

93. As discussed above, the Individual Defendants failed to meet their responsibilities and obligations as provided in the Company's Code of

Business Ethics and Director, Officer & Employee Conduct, the Company's Corporate Governance Guidelines, and the Board's Compensation Committee Charter. The Individual Defendants' illegal course of conduct constituted breaches of their fiduciary duties to FXCM and has resulted in significant harm to the Company.

**E. Control, Access and Authority**

94. The Individual Defendants, because of their positions of control and authority as directors and/or officers of FXCM, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein.

95. In addition, according to the 2014 Annual Proxy, the Individual Defendants controlled 24,477,098 votes, constituting 29.9% of the Company's total voting power.

96. Because of their advisory, executive, managerial, and/or directorial positions with FXCM, each of the Individual Defendants had access to adverse, non-public information about the financial condition and operations of FXCM.

97. At all times relevant hereto, each of the Individual Defendants was the agent of each other and of FXCM, and were at all times acting within the course and scope of such agency.

**F. Reasonable and Prudent Supervision**

98. To discharge their duties, the officers and directors of FXCM were required to exercise reasonable and prudent supervision over the management, policies, practices, and controls of the financial affairs of the Company. By virtue of such duties, the officers and directors of FXCM were required to, among other things:

(a) ensure that the Company complied with its legal obligations and requirements, including acting only within the scope of its legal authority;

(b) conduct the affairs of the Company in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business, to avoid wasting the Company's assets, and to maximize the value of the Company's stock;

(c) properly and accurately guide investors and analysts as to the true financial condition of the Company at any given time;

(d) remain informed as to how FXCM conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, make reasonable inquiry in connection therewith, and take steps to correct such conditions or practices and make such disclosures as necessary to comply with securities laws; and

(e) ensure that FXCM was operated in a diligent, honest, and prudent manner in compliance with all applicable laws, rules, and regulations.

## **VI. DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

99. Plaintiff brings this action derivatively to redress injuries suffered by the Company as a direct result of the breaches of fiduciary duties by the Individual Defendants.

100. Plaintiff has owned FXCM stock during the wrongful course of conduct by the Individual Defendants alleged herein and continues to hold FXCM stock.

101. Plaintiff will adequately and fairly represent the interests of FXCM and its shareholders in enforcing and prosecuting his rights and has retained counsel competent and experienced in shareholder derivative litigation.

102. Plaintiff has not made a demand on FXCM's Board to bring suit asserting the claims set forth herein because a pre-suit demand would be futile and is excused as a matter of law.

103. The FXCM Board, at the time of the filing of this action, consisted of the following Individual Defendants: Niv, Ahdout, Grossman, Sakhai, Yusupov, Brown, Davis, Fish, Gruen, LeGoff, and Silverman. Under the test articulated in *Aronson v. Lewis*, 473 A. 2d 805 (Del. 1984), demand is excused in this case because: (1) the directors are not disinterested or independent, and (2) the directors' conduct in this case was not a legitimate exercise of business judgment and therefore does not have the protections of the business judgment rule.

**A. Demand is Futile Because the Directors are Financially Beholden to FXCM**

104. FXCM's precarious financial state after its customers suffered \$276 million in losses in the wake of the Swiss National Bank's announcement caused the Board to seek emergency measures to recapitalize the Company. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

105. By entering into the Leucadia Loan, FXCM's directors and officers ensured that the Company would continue operating with its Board and management team intact. If the Board had properly considered alternatives to the Leucadia Loan, such as a sale of the Company to a third party, the directors' and officers' positions on the Board and executive team of the newly combined company would be in doubt. An orderly liquidation of the Company, which may also have proven to be in the best interest of

shareholders and the Company, would also threaten the Board and the officers' continuation in office. The Leucadia Loan allowed the Company to continue in its existing form, ensuring that the directors would continue receiving their director compensation and the management team would continue earning their exorbitant executive compensation.

106. The principal professional occupations of Niv, Sakhai, Adhout, Yusupov, and Grossman are their employment with FXCM, pursuant to which they received and continue to receive substantial monetary compensation and other benefits. The compensation of FXCM's executive team<sup>21</sup> from 2012 through 2014 is summarized below:

Name	Year	Total Compensation
Drew Niv	2012	\$820, 886
	2013	\$1,481,593
	2014	\$821, 276
David Sakhai	2012	\$820,916
	2013	\$1,481,556
	2014	\$821,323
William Adhout	2012	\$821,930
	2013	\$1,482,377
	2014	\$821,875

---

<sup>21</sup> This information is taken from the 2015 annual proxy. Grossman's compensation is not included in the table because the annual proxy does not provide his compensation.

Eduard Yusupov	2012	\$808,781
	2013	\$1,469,044
	2014	\$808,781

107. The continuation of these executives' extravagant compensation packages was dependent on the Board entering into the Leucadia Loan, which each of these director-executives voted to approve. These director-executives are therefore incapable of exercising independent and disinterested judgment, and demand upon them would be futile.

108. Additionally, as a result of their high-level positions with the Company, Niv, Sakhai, Adhout, Yusupov, and Grossman are admittedly not independent under either the Company's own standards for director independence or the listing standards of the NYSE. Because of this lack of independence, Niv, Sakhai, Adhout, Yusupov, and Grossman are incapable of impartially considering a demand, and as a result, demand is futile.

109. With respect to the non-employee Individual Defendants, Gruen, Brown, Fish, LeGoff, Silverman and Davis have each received \$150,000 (\$75,000 in cash and \$75,000 payable in the form of options to purchase



FXCM common stock) in director compensation each year since 2011. This compensation is material to all of these directors. More specifically:

(a) Fish: According to the Company's 2015 annual proxy, filed with the SEC on Form DEF 14A on May 1, 2015 (the "2015 Annual Proxy"), Fish's occupation is listed as an attorney at the Law Offices of Perry Gary Fish. The 2015 Annual Proxy also states that Fish's employment with that firm ended in 2014, and the Law Office of Perry Gary Fish appears to be closed. The 2015 Annual Proxy does not indicate that Fish has been employed since 2014, and thus his sole income is his \$150,000 in director compensation. This director compensation is thus material to Fish, rendering Fish not independent and disinterested.

(b) Gruen: According to the 2015 Annual Proxy, Gruen's occupation is Vice President of Broker Online Exchange ("BOX"). BOX is a startup company formed in 2013. According to a 2014 filing with the Maryland Public Service Commission, Gruen is the founder of BOX, performing all managerial and technical aspects of the business.

A balance sheet attached to the filing states that the company's total assets were \$6,959.47 as of March 13, 2014. A profit and loss statement attached to the filing states that the company's net income in 2013 was negative \$17,498.00 and in 2014 was negative \$25,542.53. Thus, with his primary occupation as the founder and manager of a money-losing startup, Gruen's annual FXCM director compensation of \$150,000 is material to Gruen, rendering him not independent and disinterested.

(c) Silverman: According to the 2015 annual proxy, Silverman is CEO of MSR Solutions, Inc., a financial consulting firm. Based on information and belief, MSR Solutions, Inc.'s annual revenue is \$130,000. Thus, Silverman's annual director compensation of \$150,000 is material, rendering Silverman not independent and disinterested.

110. The continuation of these purportedly independent directors' compensation was dependent on the Board entering into the Leucadia Loan, which each of these directors voted to approve. These directors are therefore

incapable of exercising independent and disinterested judgment, and demand upon them would be futile.

111. Moreover, the directors and executives had unique financial incentives to maintain the Company's status quo by approving the Leucadia loan which were unavailable to the Company's common shareholders. These incentives, in the forms of the easily attainable, lucrative bonuses tied to paying off the Leucadia Loan and the favorably amended severance packages, rendered the directors and executives incapable of exercising disinterested and independent judgment when approving the Leucadia Loan.

**B. Demand is Futile Because the Board's Conduct Was Not a Valid Exercise of Business Judgment**

112. The Board's actions described herein were not taken honestly or in good faith, [REDACTED]

[REDACTED] Thus, the Board's actions were not a valid exercise of business judgment, demand is excused, and the Board must show that the transaction was entirely fair to FXCM and its shareholders.

113. First, the Board's actions in entering into the Leucadia Loan were not taken honestly and in good faith. As noted in the preceding section, the

Individual Defendants approved the Leucadia Loan in order to maintain their positions as directors and officers of Leucadia. The Board was well aware that if it did not accept the Leucadia Loan or that if the Company was sold to a third party, the directors would likely lose their positions, along with the compensation associated with their Board seats. Thus, the Board approved the highly detrimental Leucadia Loan. The terms of this loan were so egregious (described by one analyst as essentially wiping out the value of FXCM's stock) that the only explanation for the Board's entry into the transaction is the Board's bad faith desire to benefit themselves to the detriment of the Company.

114. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] did not advise FXCM on “debt financing or the debt financing provided by Leucadia.”<sup>22</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

115. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>22</sup> See FXCM’s January 19, 2015 press release.

[REDACTED]

[REDACTED]

[REDACTED].

116. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

117. The allegations detailed above demonstrate that the Board did not act in good faith or in the best interests of FXCM. The Board's actions intentionally favored the interests of the Board over the interests of FXCM and accordingly do not receive deference under the business judgment rule.

**C. Additional Reasons Why Demand is Futile**

118. In addition, demand is excused because each of the Individual Defendants faces a substantial likelihood of personal liability as each was

directly involved in the decision to approve the Leucadia Loan. As a result, the Individual Defendants cannot exercise independent objective judgment in deciding whether to institute or vigorously prosecute this action, as the Individual Directors would be required to sue themselves, potentially subjecting themselves to personal liability.

119. Demand is also excused because the wrongs alleged herein constitute violations of the Company's internal policies and charters and cannot be considered a valid exercise of business judgment. The Company has been directly and substantially injured by reason of the Individual Defendants' intentional breaches and or/reckless disregard of their fiduciary duties to FXCM.

120. More specifically, the Compensation Committee Defendants (Fish, Gruen, and Brown) were members of the Compensation Committee. As detailed in Section V.D. above, the Compensation Committee's charter charges its members with taking steps to "modify any executive compensation program that yields payments and benefits that are not reasonably related to executive and corporate performance." The Compensation Committee

modified the severance agreements of Niv, Sakhai, Adhout and Yusupov with the knowledge that a sale of the Company was increasingly likely as a result of the Leucadia Loan. The severance agreements were modified in a manner that, if triggered, would result in Niv, Sakhai, Adhout and Yusupov receiving an additional \$1.6 million in compensation over and above their prior severance agreements. Additionally, the Compensation Committee modified the bonuses of Niv, Sakhai, Adhout, Yusupov, and Lande in a manner that makes it more likely that these executives will meet the performance goals tied to their bonuses. The Compensation Committee's modifications of these executive compensation programs were designed to yield payments not reasonably related to executive and corporate performance, constituting a breach of their fiduciary duties owed to the Company. Consequently, the Compensation Committee Defendants now face a substantial likelihood of liability for their breach of fiduciary duties, making any demand upon them futile.

121. The FXCM Board is incapable or unwilling to take the actions required to seek the relief requested in this complaint.



## **VII. CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION**

122. In committing the wrongful acts complained of herein, the Individual Defendants have pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with and conspired with one another in furtherance of their common plan or design. In addition to the wrongful conduct herein alleged as giving rise to primary liability, the Individual Defendants further aided and abetted and/or assisted each other in breaching their respective fiduciary duties.

123. The purpose and effect of the Individual Defendants' conspiracy, common enterprise, and/or common course of conduct was, among other things: to disguise the Individual Defendants' violations of federal and state law, breaches of fiduciary duty, waste of corporate assets and abuse of control; and to profit from and protect their positions as directors and/or executives of the Company and the benefits they obtained as a result.

124. The Individual Defendants accomplished their conspiracy, common enterprise, and/or common course of conduct by causing the

Company to purposefully, recklessly or negligently engage in an improper and illegal course of conduct. Because the actions complained of herein occurred under the authority of the Board, each of the Individual Defendants was a direct, necessary, and substantial participant in the conspiracy, common enterprise and/or common course of conduct alleged herein.

125. Each of the Individual Defendants aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions to substantially assist the commission of the wrongdoing alleged herein, each of the Individual Defendants acted with knowledge of the primary wrongdoing, substantially assisted the accomplishment of that wrongdoing, and was aware of his or her overall contribution to and furtherance of the wrongdoing.

## **VIII. CLAIMS AGAINST DEFENDANTS**

### **COUNT I**

#### **Breach of Fiduciary Duty (Derivatively Against Individual Defendants)**

126. Plaintiff incorporates by reference and realleges each of the foregoing allegations as though fully set forth herein.

127. The Individual Defendants, as directors of FXCM, are fiduciaries of the Company and its shareholders. As such, they owe the Company the highest duties of good faith, fair dealing, due care, and loyalty. In addition, the Individual Defendants had a duty to FXCM and its shareholders to prudently supervise, manage and control the operations, business and internal financial accounting and disclosure controls of the Company.

128. The Individual Defendants have breached their duty of loyalty by approving the Leucadia Loan and the amended severance agreements and bonus plans, which elevates the interests of the Individual Defendants over the interests of FXCM and the Company's public shareholders.

129. Additionally, the Individual Defendants breached their duty of due care [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

130. In addition, the Individual Defendants, by their actions and by engaging in the wrongdoing described herein, abandoned and abdicated their

responsibilities and duties with regard to prudently managing the business of FXCM in a manner consistent with the duties imposed upon them by law. The Individual Defendants knew or recklessly disregarded the unreasonable risks associated with their misconduct and caused FXCM to engage in the practices complained of herein, which they knew had an unreasonable risk of damage to FXCM. By committing the misconduct alleged herein, the Individual Defendants breached their duties of loyalty, due care, diligence, and candor in the management and administration of FXCM's affairs and in the use and preservation of the Company's assets.

131. As a result of these breaches, FXCM has lost a substantial amount of market capitalization and will be required to transfer to Leucadia a disproportionate share of FXCM's corporate assets. Additionally, if the Company is required to pay the amended severance agreements and bonus plans, FXCM will be required to pay substantial amounts in executive compensation to Company executives.

132. Plaintiff, on behalf of FXCM, has no adequate remedy at law.

**COUNT II**  
**Contribution and Indemnification**  
**(Against all Defendants)**

133. Plaintiff incorporates by reference and realleges each of the foregoing allegations prior to Count One as though fully set forth herein.

134. FXCM is alleged to be liable to various persons, entities and/or classes by virtue of the same facts or circumstances as are alleged herein that give rise to Defendants' liability to FXCM.

135. FXCM's alleged liability on account of the wrongful acts, practices and related misconduct described above arises, in whole or in part, from the knowing, reckless, disloyal and/or bad faith acts or omissions of the Individual Defendants as alleged above, and FXCM is entitled to contribution and indemnification from each Individual Defendant in connection with all such claims that have been, are or may in the future be asserted against, FXCM by virtue of the Individual Defendants' misconduct.

136. By reason of the foregoing, FXCM has been and will be substantially damaged.

137. Plaintiff, on behalf of FXCM, has no adequate remedy at law.

**COUNT III**  
**Waste of Corporate Assets**  
**(Against all Individual Defendants)**

138. Plaintiff incorporates by reference and realleges each of the foregoing allegations prior to Count One as though fully set forth herein.

139. Defendants breached their fiduciary duties by approving the Leucadia Loan and the amended severance agreements and bonus plans.

140. As a result of the Individual Defendants' illicit course of conduct and breaches of fiduciary duties, FXCM has wasted valuable corporate assets by approving the Leucadia Loan. In addition, the Company has incurred significant potential liabilities for legal costs, penalties, fines, and/or legal fees in connection with the defense of the Individual Defendants' unlawful course of conduct complained of herein.

141. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

142. By reason of the foregoing, FXCM has been and will be substantially damaged.

143. Plaintiff, on behalf of FXCM, has no adequate remedy at law.

**COUNT IV**  
**Waste of Corporate Assets**  
**(Against Fish, Gruen, and Brown)**

144. Plaintiff incorporates by reference and realleges each of the foregoing allegations prior to Count One as though fully set forth herein.

145. Defendants Fish, Gruen, and Brown, as members of the Compensation Committee, breached their fiduciary duties by approving the amended severance agreements and bonus plans.

146. As a result of the Compensation Committee's illicit course of conduct and breaches of fiduciary duties, FXCM has wasted valuable corporate assets by approving the amended severance agreements and bonus plans.

147. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

148. Plaintiff has no adequate remedy at law.

**COUNT V**  
**Abuse of Control**  
**(Against all Defendants)**

149. Plaintiff incorporates by reference and realleges each of the foregoing allegations prior to Count One as though fully set forth herein.

150. The Individual Defendants owed duties as controlling persons to FXCM's public shareholders not to use their positions of control within the Company for their own personal interests and contrary to the interest of the Company's public shareholders.

151. The conduct of the Individual Defendants amounted to an abuse of their abilities to control FXCM in violation of their obligations to FXCM and the Company's public shareholders.

152. As a result of the Individual Defendants' abuse of control, FXCM has sustained and will continue to sustain irreparable injuries, for which there is no adequate remedy at law.

**COUNT VI**  
**Unjust Enrichment**  
**(Against Niv, Sakhai, Adhout and Yusupov)**

153. Plaintiff incorporates by reference and realleges each of the foregoing allegations prior to Count One as though fully set forth herein.

154. Through the wrongful course of conduct and actions complained of herein, Niv, Sakhai, Adhout and Yusupov were unjustly enriched at the expense of, and to the detriment of FXCM. The wrongful conduct was continuous and



resulted in ongoing harm to the Company. Niv, Sakhai, Adhout and Yusupov were unjustly enriched in connection with entering into the amended severance agreements and bonus plans, which entitles Niv, Sakhai, Adhout and Yusupov to lavish, unjustified severance and bonus compensation.

155. Plaintiff, as a shareholder and representative of FXCM, seeks restitution from these defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits, and other compensation obtained by these defendants, and each of them, from their wrongful conduct and fiduciary breaches.

156. By reason of the foregoing, FXCM was damaged.

157. Plaintiff, on behalf of FXCM, has no adequate remedy at law.

#### **IX. REQUEST FOR RELIEF**

WHEREFORE, Plaintiff demands judgment as follows:

(a) Directing the Individual Defendants to account to FXCM for all damages sustained or to be sustained by the Company by reason of the wrongs alleged herein;

(b) Directing FXCM to take all necessary actions to reform its corporate governance and internal procedures to comply with applicable laws and protect the Company and its shareholders from a recurrence of the events described herein;

(c) Granting equitable and/or injunctive relief as permitted by law, equity and state statutory provisions sued hereunder, including attaching, impounding, imposing a constructive trust on, or otherwise restricting the Individual Defendants, to assure Plaintiff's effective remedy;

(d) Awarding to FXCM restitution from the Individual Defendants and ordering disgorgement of all profits, benefits, and other compensation obtained by the Individual Defendants.

(e) Directing the Individual Defendants to pay interest at the highest rate allowable by law on the amount of damages sustained by the Company as a result of the Individual Defendants' culpable conduct;

(f) Rescinding the amended severance agreements for Niv, Sakhai, Adhout, and Yusupov;

(g) Rescinding the annual incentive bonus plans for Niv, Sakhai, Adhout, Yusupov, and Lande;

(h) Repealing the Right Plan that was implemented on January 30, 2015;

(i) Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees and expenses; and

(j) Granting such other and further relief as the Court may deem just and proper.

### **JURY DEMAND**

Plaintiff demands a trial by jury.

Dated: December 15, 2015

Respectfully submitted,

**ANDREWS & SPRINGER, LLC**

By: /s/ Peter B. Andrews  
Peter B. Andrews (# 4623)  
Craig J. Springer (# 5529)  
David M. Sborz (#6203)  
3801 Kennett Pike,  
Building C, Suite 305  
Wilmington, DE 19807  
Tel: (302) 504-4957

*Delaware Counsel for Plaintiffs*

*Of Counsel:*

**SAXENA WHITE P.A.**

Joseph E. White, III  
Jonathan M. Stein  
Adam D. Warden  
5200 Town Center Circle,  
Suite 601  
Boca Raton, FL 33486  
Tel: (561) 394-3399  
Fax: (888) 458-9055