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STATE OF CALIFORNIA
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
DEPARTMENT OF CORPORATIONS

TO: Melody Nganthuy Phan aka Melody Thuy Phan and Melody Phan
18831 Flagstaff Lane
Huntington Beach, CA 92646

My Forex Planet, Inc.
2030 Main Street, Suite 1300
Irvine, CA 92614

Wal Capital, S.A.
A Costa Rican Corporation

Top Global Capital, Inc.
A Panamanian Corporation

DESIST AND REFRAIN ORDER

(For violations of section 25110, 25401, 29520 and 29535 of the California Corporations Code)

The California Commissioner of Business Oversight (“Commissioner”) finds that:

1. At all relevant times, Melody Nganthuy Phan aka Melody Thuy Phan and Melody Phan (“Phan”) was a natural person, and the control person of My Forex Planet, Wal Capital, S.A., and Top Global Capital, Inc. Phan’s last known address in California is 18831 Flagstaff Lane, Huntington Beach, CA 92646. And, during the relevant times, Phan operated her various businesses in Orange County and the surrounding counties in the State of California. She was last known to reside somewhere in Las Vegas, Nevada.
2. At all relevant times, My Forex Planet, Inc. (“MFP”) was a Nevada Corporation, incorporated on May 11, 2006. The Nevada Secretary of State’s website currently lists MFP’s corporate status as “Revoked.” Phan and her husband, Marc Wallach, owned MFP, but Phan controlled MFP: she controlled all of MFP’s bank and trading accounts and she made all the hiring and firing decisions. Phan used MFP to recruit customers for Phan’s fraudulent investment schemes through trading classes run by Phan and other agents. Phan filed pending registrations on behalf of MFP with the

1 Commodities Futures Trading Commission (“CFTC”) as an introducing broker and commodity
2 trading advisor, but withdrew the applications before the Commission decided their merit. MFP’s
3 last known business address is 2030 Main Street, Suite 1300, Irvine, CA 92614.

4 3. The Commissioner is informed and believes that Wal Capital, S.A. (“Wal Capital”) is most
5 likely a Costa Rican company formed, owned, and controlled by Phan. Phan misrepresented to her
6 investors that Wal Capital operated as a FOREX broker, offering customers self-traded FOREX
7 accounts. Wal Capital also carried customer accounts managed by Phan. In fact, Wal Capital was
8 never registered with the CFTC or the National Futures Association (“NFA”). The Commissioner
9 was unable to locate any address for Wal Capital in Costa Rica, but believes that Phan ran Wal
10 Capital, as she did all of her companies, out of the same offices in which My Forex Planet was
11 located.

12 4. The Commissioner is informed and believes that Top Global Capital, Inc. (“Top Global”) is a
13 Panamanian company formed, owned, and controlled by Phan. Phan represented to her investors that
14 Top Global was a profitable commodity pool. Like Wal Capital, Top Global was never registered
15 with the CFTC or the NFA in any capacity. Phan promised investors between 3 – 5% interest every
16 month on amounts invested with Top Global. The Commissioner was unable to locate any address
17 for Top Global in Panama, but believes that Phan ran Wal Capital, as she did all of her companies,
18 out of the My Forex Planet offices.

19 5. Shortly after incorporating MFP, Phan began teaching FOREX classes using the “My Forex
20 Planet” entity. At that time, MFP operated out of a storefront in Garden Grove from which Phan
21 operated a number of other unrelated businesses. Phan, MFP, and their agents touted Phan as an
22 extremely successful FOREX trader with a proven trading system.

23 6. Phan, MFP and their agents recruited students for the FOREX classes by word-of-mouth,
24 advertisements on the internet and in radio ads on Vietnamese-language radio stations. These trading
25 classes were multi-day sessions, given in both English and Vietnamese. Initially, Phan and her
26 agents referred their students to actual FOREX brokers. Phan and MFP received referral fees.

27 7. After Phan incorporated Wal Capital in 2008, she began operating it as a FOREX Broker,
28 offering self-traded retail FOREX accounts to customers often recruited through her trading classes.

1 Phan, MFP, and Wal Capital received over one million dollars (\$1,000,000.00) from persons,
2 including California Residents, who believed that they opened retail FOREX accounts at Wal Capital.

3 8. After Phan formed Top Global, she began operating it as a FOREX commodity pool, offering
4 investments in a fund purportedly traded by Phan. Phan, MFP, and Top Global promised investors 3-
5 5% a month, supposedly earned by Phan through her trading expertise. Phan, MFP, and Top Global
6 received over two million dollars (\$2,000,000.00) from persons, including California residents, who
7 believed that they invested in a successful commodity pool at Top Global.

8 9. By late 2009, Phan was running MFP, Wal Capital, and Top Global as a common enterprise,
9 operating each out of the same location(s), co-mingling funds, sharing agents and employees, all
10 under the common control of Phan. In addition, Phan also blended her other, smaller businesses into
11 her common enterprise, using these companies to accept and disburse monies for her common
12 enterprise. Those companies included Zeenoost, Soleil Realty, West Newport and others.
13 Hereinafter, all such companies under the control of Phan are sometimes referred to as the “Phan
14 Common Enterprise.”

15 10. The California Commodity Law of 1990 (“CCL”) is found at California Corporations Code
16 sec. 29500 et. seq. Foreign currency is a commodity. (CCL sec. 29504.) The self-traded retail
17 FOREX accounts offered by Phan, MFP, and Wal Capital were offered, sold, or offered to be
18 purchased or sold as commodities and/or commodity contracts within the meaning of sections 29504
19 and 29505 of the CCL.

20 11. The California Corporate Securities Law of 1968 (“CSL”) is found at California Corporations
21 Code sec. 25000 et. seq. The investment contracts offered by Phan, MFP, and Top Global in the
22 FOREX commodity pool, promising 3-5% interest per month, based on profits earned from Phan’s
23 trading efforts were securities within the meaning of CSL section 25019.

24 12. With regard to the activity regulated by the Commissioner under the CCL, neither Phan, MFP,
25 Wal Capital, nor Top Global were licensed as commodities brokers. The offer and sale of
26 commodities and commodities contracts by Phan and the Phan Common Enterprise were, therefore,
27 all done in violation of CCL section 29520.

28 13. Further, Phan and the Phan Common Enterprise failed to disclose to investors that:

1 a. Neither Phan nor any of the Phan Common Enterprise companies were licensed by the
2 Commodity Futures Trading Commission or registered with the National Futures Association.

3 b. Phan and the Phan Common Enterprise must comply with the CCL and cannot avail
4 themselves of any exceptions or exemptions under the CCL;

5 c. Phan and the Phan Common Enterprise were acting as unlicensed brokers in these
6 transactions in violation of section 29535 of the CCL.

7 14. Phan and the Phan Common Enterprise committed specific fraudulent acts in relation to these
8 commodities transactions in violation of 29536 of the CCL, including, but not limited to:

9 a. converting investor monies;

10 b. misrepresenting Phan's FOREX trading acumen;

11 c. misleading Wal Capital customers into believing they had segregated trading accounts
12 at Wal Capital;

13 d. misrepresenting the risks associated with Phan's trading system and the risks being
14 taken in the investors' accounts;

15 15. With regard to the activity regulated by the Commissioner under the CSL, the investment
16 contracts offered by Phan, MFP, and Top Global were unqualified, non-exempt securities offered and
17 sold in California in violation of section 25110.

18 16. Further, Phan and the Phan Common Enterprise made the following material
19 misrepresentations and omissions in the offer and sale of the securities in violation of CSL section
20 25401, as follows:

21 a. misrepresenting Phan's FOREX trading acumen;

22 b. converting investor monies to uses other than the commodities pool; and

23 c. promising a return on investment of 3-5% interest a month based on Phan's trading
24 earnings when those rates of return were unlikely and unproven.

25 **COMMODITIES VIOLATIONS AND ORDERS**

26 Based upon the foregoing, the Commissioner is of the opinion that Melody Nganthuy Phan,
27 My Forex Planet, Inc., Wal Capital, S.A, and Top Global Capital, Inc., sold, purchased, or offered to
28 sell or purchase commodities under commodities contracts, or offered or entered into, as sellers or

1 purchasers, commodity contracts in violation of section 29520 of the CCL.

2 Pursuant to section 29542 of the CCL, Melody Nganthuy Phan, My Forex Planet, Inc., Wal
3 Capital, S.A, and Top Global Capital, Inc., are hereby ordered to desist and refrain from the further
4 offer and sale of commodities or commodities contracts and to desist and refrain from the further
5 offer to enter into, or from entering into, as sellers or purchaser, commodities contracts in the State of
6 California, unless and until such activity is in compliance with CCL section 29520.

7 Based upon the foregoing, the Commissioner is of the opinion that Melody Nganthuy Phan,
8 My Forex Planet, Inc., Wal Capital, S.A, and Top Global Capital, Inc., engaged in the trade or
9 business or otherwise acted as a commodity merchant or broker without a license to do so in violation
10 of section 29535 of the CCL.

11 Pursuant to section 29542 of the CCL, Melody Nganthuy Phan, My Forex Planet, Inc., Wal
12 Capital, S.A, and Top Global Capital, Inc., are hereby ordered to desist and refrain from engaging in
13 the trade or business or otherwise acting as a commodity merchant or broker, unless and until such
14 activity is in compliance with CCL section 29535.

15 Based on the above mentioned findings, the California Corporations Commissioner is also of
16 the opinion that, in connection with the offer and sale of commodities or commodities contracts,
17 Melody Nganthuy Phan, My Forex Planet, Inc., Wal Capital, S.A, and Top Global Capital, Inc.,
18 willfully made untrue statements of material fact and omitted to state material facts necessary in order
19 to make the statements made, in light of the circumstances under which they were made, not
20 misleading in violation of section 29536 of the CCL.

21 Pursuant to section 29542 of the CCL, Melody Nganthuy Phan, My Forex Planet, Inc., Wal
22 Capital, S.A, and Top Global Capital, Inc., are hereby ordered to desist and refrain from purchasing
23 or selling or offering to purchase or sell commodities or commodities contracts and from offering to
24 enter into or entering into commodities contracts in the State of California by employing any untrue
25 statement of material fact or omitting to state material facts necessary in order to make statements
26 made, in light of the circumstances under which they were made, not misleading.

27 **SECURITIES VIOLATIONS AND ORDERS**

28 Further, based upon the foregoing, the Commissioner is of the opinion that the investment

1 contracts in the commodity pool operated by Melody Nganthuy Phan, My Forex Planet, Inc., Wal
2 Capital, S.A, and Top Global Capital, Inc. are securities under the CSL. These securities were not
3 qualified by the Commissioner for sale in the State of California, nor were they exempt from the
4 qualification process. Thus, Melody Nganthuy Phan, My Forex Planet, Inc., Wal Capital, S.A, and
5 Top Global Capital, Inc., offered and sold unqualified, non-exempt securities in the State of
6 California, in violation of section 25110 of the CSL.

7 Pursuant to section 25532 of the Corporate Securities Law of 1968, Melody Nganthuy Phan,
8 My Forex Planet, Inc., Wal Capital, S.A, and Top Global Capital, Inc., are hereby ordered to desist
9 and refrain from the further offer and sale of unqualified, non-exempt securities, including but not
10 limited to investment contracts in commodity pools, in violation of section 25110 of the CSL.

11 Further, the Commissioner is of the opinion that the aforementioned securities were offered or
12 sold in this state by means of written or oral communications which included an untrue statement of a
13 material fact or omitted to state a material fact necessary in order to make the statements made, in the
14 light of the circumstances under which they were made, not misleading, in violation of CSL section
15 25401.

16 Pursuant to section 25532 of the CSL, Melody Nganthuy Phan, My Forex Planet, Inc., Wal
17 Capital, S.A, and Top Global Capital, Inc., are ordered to desist and refrain from the offer and sale of
18 any and all securities in this state by means of written or oral communications which include any
19 untrue statement of a material fact or any omission of a material fact necessary in order to make the
20 statements made, in the light of the circumstances under which they were made, not misleading.

21 This order is necessary, in the public interest, for the protection of investors and consistent
22 with the purposes, policies, and provisions of the California Commodity Law of 1990.

23 Dated: April 16, 2014
24 Sacramento, CA

JAN LYNN OWEN
Commissioner of Business Oversight

25
26 By _____
27 MARY ANN SMITH
28 Deputy Commissioner
Enforcement Division