

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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1:03 pm, May 14, 2013

In the Matter of:)
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MB Trading Futures Inc.,)
)

Respondent.)
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)

CFTC Docket No. 13-23

ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, AS AMENDED,
MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that between on or about October 18, 2010 and March 1, 2012 (the “Relevant Period”), MB Trading Futures Inc. (“MBTF” or “Respondent”) violated Commission Regulation (“Regulation”) 5.7(a), 17 C.F.R. § 5.7(a) (2012), for 456 calendar days and Regulation 5.8(a), 17 C.F.R. § 5.8(a) (2012), for 501 calendar days. Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether MBTF engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, as Amended, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledge service of this Order.¹

¹ Respondent consents to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondent does not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

III.

The Commission finds the following:

A. Summary

As a registered retail foreign exchange dealer (“RFED”) and futures commission merchant (“FCM”) offering or engaging in retail off-exchange foreign currency (“forex”) transactions, MBTF has been subject to Part 5 of the Regulations, 17 C.F.R. §§ 5.1 *et seq.*, beginning with the Relevant Period and continuing to the present. Pursuant to Part 5 of the Regulations, MBTF must at all times maintain adjusted net capital as determined by Regulation 5.7(a), 17 C.F.R. § 5.7(a) (2012), and maintain sufficient permitted assets as required by Regulation 5.8(a), 17 C.F.R. § 5.8(a) (2012).

During the Relevant Period, MBTF improperly included certain funds held in four accounts in its adjusted net capital computations for purposes of Regulation 5.7(a). After excluding those funds, MBTF, which was otherwise in compliance with its capital requirement, failed to maintain the adjusted net capital required of it by Regulation 5.7(a) for 456 calendar days during the Relevant Period.

Additionally, MBTF improperly included funds held in three accounts in its asset computations for purposes of Regulation 5.8(a). After excluding those funds, MBTF, which was otherwise in compliance with its asset requirement, failed to maintain sufficient permitted assets under Regulation 5.8(a) for 501 calendar days during the Relevant Period.

B. Respondent

MB Trading Futures Inc. maintains a business address at 1926 East Maple Avenue, El Segundo, California 90245. MBTF has been registered with the Commission as an FCM since February 28, 2006 and as an RFED since September 9, 2010. MBTF was also registered with the Commission as an introducing broker (“IB”) from May 17, 2002 until February 28, 2006, when it withdrew its IB registration.

C. Facts

1. Background

As an RFED and FCM offering or engaging in retail forex transactions beginning with the Relevant Period and continuing to the present, MBTF is subject to Part 5 of the Regulations, 17 C.F.R. §§ 5.1 *et seq.* Pursuant to Part 5 of the Regulations, MBTF is required to maintain adjusted net capital of \$20,000,000 plus five percent of its total retail forex obligation in excess of \$10,000,000 at all times. 17 C.F.R. § 5.7(a)(1)(i)(B), (a)(3) (2012). MBTF is also required to hold assets permitted by Regulation 1.25, 17 C.F.R. § 1.25 (2012), in an amount equal to or exceeding its total retail forex obligation at all times. 17 C.F.R. § 5.8(a) (2012).

2. *Capital deficiencies under Regulation 5.7*

During the Relevant Period, MBTF included unsecured receivables accruing from over-the-counter forex transactions in four accounts in its adjusted net capital computations for purposes of Regulation 5.7(a). Unlike their parent companies, the entities at which those four accounts were held are not among the regulated entities enumerated by Regulation 5.7(b)(2)(iii), 17 C.F.R. § 5.7(b)(2)(iii) (2012). As a result, unsecured receivables accruing from over-the-counter forex transactions in those accounts must be excluded in any computation of adjusted net capital for purposes of Regulation 5.7(a). After excluding such funds from MBTF's adjusted net capital, the Commission has determined that MBTF, which was otherwise in compliance with its capital requirement, failed to maintain the adjusted net capital required of it by Regulation 5.7(a) for 456 calendar days during the Relevant Period.

3. *Asset deficiencies under Regulation 5.8*

During the Relevant Period, MBTF included funds held in two of the accounts discussed in Part C.2, *supra*, in its asset computations for purposes of Regulation 5.8(a). Unlike their parent companies, the entities at which those two accounts were held are not among the qualifying institutions enumerated by Regulation 5.8(b), 17 C.F.R. § 5.8(b) (2012). Funds held in those accounts may therefore not be considered assets for purposes of Regulation 5.8(a).

Additionally, MBTF improperly included funds it held in another account in its asset computations for purposes of Regulation 5.8(a) during the Relevant Period. The funds in that account should not have been included because the funds were not sufficiently liquid, in that the entity holding that account could potentially delay the return of funds to MBTF for more than one business day. Only assets of the type permitted by Regulation 1.25 may be considered assets for purposes of Regulation 5.8(a), and Regulation 1.25(b)(1), 17 C.F.R. § 1.25(b)(1) (2012), requires that investments be convertible into cash within one business day without any material discount in value. Accordingly, funds in that account were not of the type of assets permitted by Regulation 1.25 and could not be considered assets for purposes of Regulation 5.8(a).

After excluding funds held in these three accounts from MBTF's assets, the Commission has determined that MBTF, which was otherwise in compliance with its asset requirement, failed to maintain sufficient permitted assets under Regulation 5.8(a) for 501 calendar days during the Relevant Period.

4. *Remedial actions and cooperation*

After MBTF determined on or about March 1, 2012 that it could not include certain funds in its adjusted net capital computations for purposes of Regulation 5.7(a) or in its asset computations for purposes of Regulation 5.8(a), MBTF transferred those funds into proper accounts and notified the Commission of its adjusted net capital and asset deficiencies the same day. MBTF also adopted enhanced written compliance procedures designed to ensure that it would not violate Regulation 5.7(a) or 5.8(a) in the future.

In settling this matter, the Commission has taken into account the corrective action MBTF undertook after its deficiencies were discovered and MBTF's cooperation.

IV.

LEGAL DISCUSSION

A. Background

On October 18, 2010, the Commission enacted Part 5 of the Regulations, 17 C.F.R. §§ 5.1 *et seq.*, to implement certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”)² and the Food, Conservation and Energy Act of 2008 (“CRA”)³ regarding forex transactions. Pursuant to Part 5 of the Regulations, each RFED and FCM offering or engaging in retail forex transactions must at all times maintain adjusted net capital as determined by Regulation 5.7(a), 17 C.F.R. § 5.7(a) (2012), and hold sufficient permitted assets as required by Regulation 5.8(a), 17 C.F.R. § 5.8(a) (2012).

B. Adjusted net capital requirements

Regulation 5.7 requires each RFED and FCM offering or engaging in retail forex transactions to maintain adjusted net capital of \$20,000,000 or a greater amount as determined by Regulation 5.7(a)(1)(i) at all times. 17 C.F.R. § 5.7(a)(1)(i), (a)(3) (2012). Regulation 5.7 further requires, *inter alia*, that for purposes of calculating adjusted net capital, current assets must exclude unsecured receivables accruing from certain over-the-counter forex-related transactions, or arising from the deposit of collateral or compensating balances with respect to such transactions, unless the unsecured receivable is from an eligible contract participant who is also among the regulated entities enumerated by Regulation 5.7(b)(2)(iii), 17 C.F.R. § 5.7(b)(2)(iii) (2012).

After excluding MBTF’s unsecured receivables accruing from over-the-counter forex transactions in accounts held at entities not enumerated by Regulation 5.7(b)(2)(iii), MBTF failed to maintain its required adjusted net capital for 456 calendar days during the Relevant Period in violation of Regulation 5.7(a).

C. Asset requirements

Regulation 5.8 requires each RFED and FCM offering or engaging in retail forex transactions to hold assets solely of the type permitted by Regulation 1.25, 17 C.F.R. § 1.25 (2012), in an amount equal to or exceeding its total retail forex obligation at all times. 17 C.F.R. § 5.8(a) (2012). Such assets must be held at one or more qualifying institutions in the United States or money center countries, as defined in Regulation 1.49, 17 C.F.R. § 1.49 (2012), that are also enumerated by Regulation 5.8(b), 17 C.F.R. § 5.8(b) (2012).

² Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010).

³ Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008, §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008)).

After excluding assets MBTF held in accounts that were not permitted under Regulation 1.25 or at entities not enumerated by Regulation 5.8(b), MBTF failed to maintain sufficient permitted assets to meet or exceed its retail forex obligation for 501 calendar days during the Relevant Period in violation of Regulation 5.8(a).

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that MBTF violated Regulations 5.7(a) and 5.8(a), 17 C.F.R. §§ 5.7(a) and 5.8(a) (2012), during the Relevant Period.

VI.

OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 - 1. the filing and service of a complaint and notice of hearing;
 - 2. a hearing;
 - 3. all post-hearing procedures;
 - 4. judicial review by any court;
 - 5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 - 6. any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1-30 (2012), relating to, or arising from, this proceeding;
 - 7. any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and

8. any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer; and
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. makes findings by the Commission that Respondent violated Regulations 5.7(a) and 5.8(a), 17 C.F.R. §§ 5.7(a) and 5.8(a) (2012);
 2. orders Respondent and its successors and assigns to cease and desist from violating Regulations 5.7(a) and 5.8(a), 17 C.F.R. §§ 5.7(a) and 5.8(a) (2012);
 3. orders Respondent to pay a civil monetary penalty in the amount of \$200,000, plus post-judgment interest; and
 4. orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent and its successors and assigns shall cease and desist from violating Regulations 5.7(a) and 5.8(a), 17 C.F.R. §§ 5.7(a) and 5.8(a) (2012).
- B. Respondent shall pay a civil monetary penalty in the amount of two hundred thousand dollars (\$200,000) within ten (10) days of the date of entry of this Order (the "CMP Obligation"). If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2006). Respondent shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables --- AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

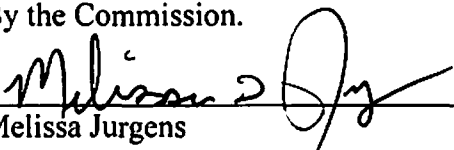
If payment is to be made by electronic funds transfer, Respondent shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies Respondent and the name and docket number of this proceeding. Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and to Stephanie Reinhart, Senior Trial Attorney, Commodity Futures Trading Commission, 525 W. Monroe Street, Suite 1100, Chicago, IL 60661.

- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. **Representations and Undertakings:** In its Offer, Respondent represents to the Commission that it has adopted enhanced written compliance procedures regarding future compliance with Regulations 5.7(a) and 5.8(a), 17 C.F.R. §§ 5.7(a) and 5.8(a) (2012). Respondent undertakes to adopt internal controls that are reasonably designed to ensure that its agents and employees under its authority and control comply fully with those enhanced written compliance procedures.
 2. **Public Statements:** Respondent and its successors and assigns agree that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall undertake all steps necessary to ensure that all of their agents and employees under their authority or control understand and comply with this agreement.
 3. **Partial Satisfaction:** Respondent understands and agrees that any acceptance by the Commission of partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

4. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number or mailing address within ten (10) calendar days of the change.

The provisions of this Order shall be effective as of this date.

By the Commission.



Melissa Jurgens
Secretary of the Commission
Commodity Futures Trading Commission

Dated: May 14, 2013