

**UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION**

In the Matter of:

XBT Corp. SARL d/b/a First
Global Credit,

Respondent.

CFTC Docket No. 20-04

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Office of Proceedings
Proceedings Clerk

8:44 am, Oct 31, 2019

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

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from March 2016 to July 2017 (“Relevant Period”), XBT Corp. SARL d/b/a First Global Credit (“FGC” or “Respondent”) violated Section 4d(a)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6d(a)(1) (2012). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

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 Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.¹

¹ Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or, a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

II. FINDINGS

The Commission finds the following:

A. Summary

Respondent's website, www.firstglobalcredit.com ("website"), claimed to provide "Mainstream market access" for digital currency traders. During the Relevant Period, through the website and its electronic trading platform ("platform") accessed through the website, FGC solicited or accepted orders for the purchase or sale of commodity futures from U.S. customers, and accepted bitcoin to margin customers' trades, without being registered with the Commission as a futures commission merchant ("FCM").

Accordingly, Respondent violated Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2012).

In accepting the Offer, the Commission recognizes Respondent's cooperation with the Commission's Division of Enforcement. The Commission notes that Respondent's cooperation is reflected in the form of a substantially reduced civil monetary penalty.

B. Respondent

XBT Corp. SARL, d/b/a First Global Credit during the Relevant Period, is a company organized under the laws of Switzerland and has its main office in Geneva, Switzerland.

C. Facts

1. Respondent's Unlawful Operation as an FCM

During the Relevant Period, Respondent's website and platform solicited customers, including those in the United States, to engage in the purchase or sale of commodities for future delivery ("futures"), such as 10-Year Treasury Note and E-Micro Gold futures, among other futures contracts. Trades on FGC's platform were settled in bitcoin in accord with FGC's claim of providing "Mainstream market access" for digital currency traders.

In furtherance of this solicitation, in a March 2016 press release posted on its website, FGC announced "First Global Credit Brings Commodity Futures Trading to Digital Currency Holders." The press release announced that "Commodity Futures is the next logical step in providing digital currency holders with the same choices fiat currency holders have" while "clients still get the benefit of trading a leveraged contract because in the case of futures, leverage is built directly into the contract."

FGC subsequently solicited or accepted orders from customers in contracts listed on the Chicago Mercantile Exchange Globex trading platform, including the 10-Year Treasury Note futures and the E-Micro Gold futures. As noted, FGC's platform was accessed through its website. Prior to any transactions, FGC required customers to submit certain Know-Your-Customer ("KYC") information and documents. As part of the account opening process customers deposited bitcoin in a bitcoin wallet controlled by FGC.

To assist customers FGC established a separate page on its website instructing customers how to “Trade Futures Using bitcoins as collateral margin.” Customers entered orders using bitcoin as collateral margin. According to FGC’s website “Since you retain your bitcoins (and the growth benefit) we arrange a loan to cover the margin needed to place the trade.” FGC charged a financing fee for positions held overnight. FGC also charged a commission per trade.

Through its platform, FGC accepted money, securities, or property (or extended credit in lieu thereof) to margin, guarantee, or secure such trades, including those of U.S. customers. Thus, FGC acted as an FCM by soliciting or accepting orders for futures. During the Relevant Period, FGC was not registered with the Commission as an FCM or in any other capacity, and FGC was not exempt from registration.

III. LEGAL DISCUSSION

A. Respondent’s Failure To Register as an FCM

Section 1a(28)(A) of the Act, 7 U.S.C. § 1a(28)(A) (2012), defines an FCM in relevant part as an individual, association, partnership, corporation, or trust that is engaged in soliciting or in accepting orders for the purchase or sale of a commodity for future delivery and in or in connection with soliciting or accepting such orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades that result or may result therefrom.

Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2012), makes it unlawful for any person to be an FCM unless such person is registered as such with the Commission.

During the Relevant Period, Respondent solicited or accepted orders for futures from U.S. customers and in connection with these activities, accepted money, securities, or property in the form of bitcoin as margin. *See CFTC v. Ipool Ltd.*, No. 1:18-CV-2243-TNM, 2019 WL 1605201 (D.D.C. Mar. 4, 2019) (consent order) (finding that a foreign trading platform was required to be registered as an FCM because it accepted money, securities, or property in the form of bitcoin, to margin, guarantee, or secure trades). Respondent did this without being registered as an FCM. Therefore, Respondent violated Section 4d(a)(1) of the Act. *See id.*; *see also In re Davisco Foods Int’l, Inc.*, CFTC No. 17-11, 2017 WL 1195808, at *2 (Mar. 27, 2017) (consent order) (finding a cheese and food ingredient company was required to be registered as an FCM because it accepted orders in futures contracts from its milk suppliers and accepted money from, or extended credit to these suppliers by debiting or crediting the suppliers’ accounts).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent violated Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2012).

V. OFFER OF SETTLEMENT

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

- A. Acknowledges 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 (2012), and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2019), 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, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), 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, including this Order;
- 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;
- 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 Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2012);
 - 2. Orders Respondent to cease and desist from violating Section 4d(a)(1) of the Act;
 - 3. Orders Respondent to pay a civil monetary penalty in the amount of one hundred thousand dollars (\$100,000) within thirty days of the date of the entry of this Order; and

4. Orders Respondent to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2012).
- B. Respondent shall pay a civil monetary penalty in the amount of one hundred thousand dollars (\$100,000) (“CMP Obligation”), within thirty days of the date of the entry of this Order. If the CMP Obligation is not paid in full within thirty 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 (2012).

Respondent shall pay the CMP Obligation and any post-judgment interest 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:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 181
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne 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 the 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, N.W., Washington, D.C. 20581, and to Harry E. Wedewer, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581.

- C. Respondent shall comply with the following conditions and undertakings set forth in the Offer:

1. Public Statements: Respondent agrees that neither it nor any of its agents or employees under its 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 shall comply with this agreement, and shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.

2. Disgorgement: Respondent agrees to pay disgorgement in the amount of one thousand eight hundred ninety-five dollars (\$1895) ("Disgorgement Obligation"), representing the gains received in connection with such violations, within thirty days of the date of the entry of this Order. If the Disgorgement Obligation is not paid or otherwise satisfied in full within thirty days of the date of entry of this Order, then post-judgment interest shall accrue on the Disgorgement 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 (2012).

Respondent shall pay any portion of the Disgorgement Obligation and any post-judgment interest 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:

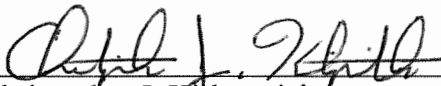
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(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the Disgorgement Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying 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, N.W., Washington, D.C. 20581, and to Harry E. Wedewer, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581.

3. Cooperation: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.
4. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any 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.
5. 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 and mailing address within ten calendar days of the change.

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

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: October 31, 2019