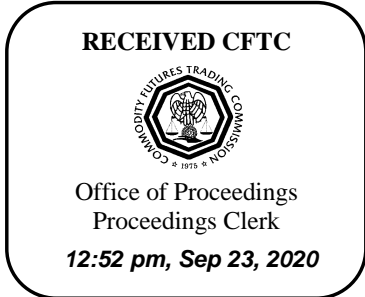


UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION



In the Matter of:

OTC EUROPE LLP,

Respondent.

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) **CFTC Docket No. 20-63**
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**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 October 1, 2015 to May 22, 2020 (“Relevant Period”), Respondent OTC Europe LLP (hereinafter “Respondent” or “OTC Europe”) violated Section 4f(b) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6f(b) (2018), and Regulation 1.17(a)(1)(iii), 17 C.F.R. § 1.17(a)(1)(iii) (2019), of the Commission Regulations (“Regulations”) promulgated thereunder. 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

During the Relevant Period, OTC Europe, a registered introducing broker (“IB”), improperly accounted for deductions arising out of a credit agreement it entered to guarantee a line of credit for an affiliated company (the “Credit Agreement”) in computing its adjusted net capital. Consequently, OTC Europe failed to meet its adjusted net capital requirements during each year of the Relevant Period by failing to properly deduct the amount of the guaranteed drawdown under the revolving line of credit (hereinafter “drawdown”) in calculating its adjusted net capital. OTC Europe continued to operate as an IB while failing to maintain the minimum adjusted net capital required of an IB.

Accordingly, Respondent violated Section 4f(b) of the Act, 7 U.S.C. § 6f(b) (2018) and Regulation 1.17(a)(1)(iii), 17 C.F.R. § 1.17(a)(1)(iii) (2019).

B. RESPONDENT

OTC Europe LLP is registered with the Commission as an IB, with its principal place of business located at 10 Finsbury Square, 5th Floor, London, EC2A 1AF, United Kingdom. It has been continuously registered as an IB since October 1, 2015.

C. FACTS

1. **Failure to Maintain Minimum Required Adjusted Net Capital**

On December 21, 2012, OTC Europe entered into the Credit Agreement under which it agreed to guarantee a revolving line of credit provided to an affiliated company by a commercial bank. OTC Europe subsequently entered a “Release Agreement” (the “Release Agreement”) on May 13, 2020 and a release of the accompanying security interest on May 22, 2020, with the commercial bank, which terminated OTC Europe’s obligations under the Credit Agreement.

During the time period in which OTC Europe was bound as a guarantor of the revolving line of credit, funds were drawn on the line of credit on a monthly basis for benefit of the affiliated company, in amounts ranging from ten million dollars to as high as twenty-six million dollars. OTC Europe did not deduct the amount of the guaranteed drawdown in its calculation of adjusted net capital at any point during the Relevant Period. If the drawdowns had been accurately reflected in OTC Europe’s calculation of adjusted net capital, OTC Europe’s adjusted net capital would have been below the required amount in each year it was bound by the Credit Agreement. The resulting monthly deficits in adjusted net capital ranged from approximately \$9 million to \$25 million. OTC Europe continued to operate as an IB throughout the Relevant Period despite failing to maintain the required amount of minimum adjusted net capital during the Relevant Period.

2. Cooperation

Respondent voluntarily conducted an internal investigation of the events underlying these violations, and voluntarily reported the results to the Division of Enforcement (“Division”). Respondent further undertook a series of proactive remedial measures and other steps to improve its compliance processes to prevent future violations.

In accepting Respondent’s offer of settlement, the Commission recognizes Respondent’s remediation and cooperation with the Division’s investigation which is reflected in the form of reduced civil monetary penalty.

III. LEGAL DISCUSSION

A. OTC Europe Failed to Meet its Minimum Financial Requirements

The Act and Regulations set forth minimum financial requirements for IBs to insure that IBs meet their obligations as registrants. *See Revised Adjusted Net Capital Requirements for Futures Commission Merchants and Introducing Brokers [Final Rule]*, 74 Fed. Reg. 69279 (Dec. 31, 2009). OTC Europe failed to reflect a guarantee of an affiliate’s liability as a deduction in computing OTC Europe’s adjusted net capital. Reflecting the amount of the guarantee would have resulted in OTC Europe being undercapitalized and in violation of the minimum financial requirements as set forth in the Act and Commission Regulations. OTC Europe continued to operate as an IB while undercapitalized.

1. OTC Europe Should have Taken a Charge to Net Capital for the Drawdowns

Section 4f(b) of the Act, 7 U.S.C. § 6f(b) (2018), provides in part:

[N]o person desiring to register as futures commission merchant or as introducing broker shall be so registered unless he meets such minimum financial requirements as the Commission may by regulation prescribe as necessary to insure his meeting his obligations as a registrant, and each person so registered shall at all times continue to meet such prescribed minimum financial requirements

Regulation 1.17(a)(1)(iii), 17 C.F.R § 1.17(a)(1)(iii) (2019), provides in relevant part that an IB’s adjusted net capital requirement is the greater of \$45,000 or the “amount of adjusted net capital required by a registered futures association of which it is a member.”

Adjusted net capital is calculated by deducting total liabilities from total current assets to arrive at net capital, from which certain charges are deducted as a cushion against potential decreases in market value to arrive at adjusted net capital. *See Regulation 1.17(c)(1) and (5)*, 17 C.F.R. § 1.17(c)(1), (5) (2019); *Staff No-Action Position Regarding Introducing Brokers’ Compliance with Certain Financial Reporting and Capital Computation Requirements Under Commodity Futures Trading Commission Regulations 1.10 and 1.17*, CFTC Letter 13-82, 2013 WL 6834965, at *4 (Dec. 23, 2013).

OTC Europe was required to take a deduction in computing its adjusted net capital equal to the amount of the drawdowns on the line of credit subject to the Credit Agreement. Regulation 1.17(f)(4), 17 C.F.R. § 1.17(f)(4) (2019), states in part: “No applicant or registrant shall guarantee, endorse, or assume directly or indirectly any obligation or liability of a subsidiary or affiliate unless the obligation or liability is reflected in the computation of adjusted net capital pursuant to [. . .] this section.”

2. **OTC Europe Failed to Meet its Minimum Financial Requirements Because it Failed to Take a Deduction in Computing its Adjusted Net Capital for the Drawdowns**

Once the Credit Agreement is reflected as a deduction in the calculation of OTC Europe’s adjusted net capital during the months when there were drawdowns on the line of credit, OTC Europe failed to meet its minimum capital requirement for thirty-six months during the Relevant Period.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, OTC Europe violated Section 4f(b) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6f(b) (2018), and Regulation 1.17(a)(1)(iii), 17 C.F.R. ¶ 1.17(a)(1)(iii) (2019).

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 (2018), and 28 U.S.C. § 2412 (2018), 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 4f(b) of the Act, 7 U.S.C. § 6f(b) (2018), and Regulation 1.17(a)(1)(iii), 17 C.F.R. § 1.17(a)(1)(iii) (2019);
 2. Orders Respondent to cease and desist from violating Section 4f(b) of the Act and Regulation 1.17(a)(1)(iii);
 3. Orders Respondent to pay a civil monetary penalty in the amount of one hundred twenty thousand dollars (\$120,000), plus post-judgment interest within thirty days of the date of entry of this Order; 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 VI of this Order.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

1. Respondent and its successors and assigns shall cease and desist from violating Section 4f(b) of the Act, 7 U.S.C. § 6f(b) (2018), and Regulation 1.17(a)(1)(iii), 17 C.F.R. § 1.17(a)(1)(iii) (2019).
2. Respondent shall pay a civil monetary penalty in the amount of one hundred twenty thousand dollars (\$120,000) (the “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 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, NW, Washington, D.C. 20581.

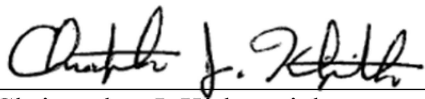
3. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
 1. **Public Statements:** Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action 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 and its successors and assigns 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. **Cooperation, in General:** 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, this action.

3. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission or the Monitor of any partial payment of Respondent's Restitution Obligation, Disgorgement Obligation, or 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 Consent 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: September 23, 2020