

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

COMMODITY FUTURES TRADING	:	
COMMISSION,	:	
	:	CIVIL ACTION NO.:
Plaintiff,	:	
	:	COMPLAINT FOR PERMANENT
v.	:	INJUNCTION, CIVIL MONETARY
	:	PENALTIES, AND OTHER EQUITABLE
O.C.M. Online Capital Markets Limited	:	RELIEF
	:	
Defendant.	:	

Plaintiff, Commodity Futures Trading Commission (“Commission” or “CFTC”), by its attorneys, alleges as follows:

I. SUMMARY

1. On October 18, 2010, the CFTC adopted new regulations implementing certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010) (“Dodd-Frank Act”), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), and the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 1 *et seq.*, with respect to off-exchange foreign currency (“forex”) transactions. Pursuant to Section 2(c)(2)(C)(iii)(I)(aa) of the Commodity Exchange Act (“the Act”), as amended, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa), an entity must be registered if it wants to solicit or accept orders from a non-eligible contract participant (“ECP”) in connection with forex transactions at a retail foreign exchange dealer (“RFED”) or futures commission merchant. Pursuant to CFTC Regulation (“Regulation”) 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011), in

connection with retail forex transactions, all RFEDs must be registered with the CFTC as of October 18, 2010.

2. Beginning on October 18, 2010 and continuing to the present (the “relevant period”), Defendant O.C.M. Online Capital Markets Limited (“O.C.M.”), upon information and belief, solicits or accepts orders from non-ECPs located in the United States in connection with retail forex transactions and is, or offers to be, the counterparty to these retail forex transactions without being registered as an RFED with the CFTC, in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa), and Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011).

3. By virtue of this conduct and the further conduct described herein, O.C.M. has engaged, is engaging, or is about to engage in acts and practices in violation of the Act, as amended, and the Regulations.

4. Accordingly, pursuant to Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, and Section 2(c)(2) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2), the Commission brings this action to enjoin O.C.M.’s unlawful acts and practices and to compel its compliance with the Act, as amended, and the Regulations and to further enjoin O.C.M. from engaging in certain commodity or forex-related activity, including, through its website, soliciting or accepting orders from U.S. customers and offering to be the counterparty to customers’ forex transactions, without appropriate registration with the Commission.

5. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

6. Unless restrained and enjoined by this Court, O.C.M. likely will continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below.

II. JURISDICTION AND VENUE

7. Section 6c(a) of the Act, as amended, to be codified at 7 U.S.C. § 13a-1(a), authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of the Act or any rule, regulation, or order thereunder.

8. The Commission has jurisdiction over the conduct and transactions at issue in this case pursuant to Sections 2(c)(2) and 6c of the Act, as amended, to be codified at 7 U.S.C. §§ 2(c)(2) and 13a-1.

9. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, as amended, to be codified at 7 U.S.C. § 13a-1(e), because O.C.M. transacts business in this District and certain transactions, acts, practices, and courses of business alleged in this Complaint occurred, are occurring, and/or are about to occur within this District.

III. PARTIES

10. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.*, and the Regulations thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011).

11. Defendant **O.C.M. Online Capital Markets Limited** is a company that is located in Tortola, British Virgin Islands. O.C.M.'s principal place of business is Trident Chambers, P.O. Box 146, Road Town, Tortola, British Virgin Islands. O.C.M. has never been registered with the Commission in any capacity.

IV. STATUTORY BACKGROUND

12. For the purposes of trading retail forex, a “retail foreign exchange dealer” is defined in Regulation 5.1(h)(1), 17 C.F.R. § 5.1(h)(1) (2011), as any person that is, or offers to be, the counterparty to a retail forex transaction, except for certain persons not relevant to this Complaint.

13. An ECP is defined by the Act, in relevant part, as an individual with total assets in excess of (i) \$10 million, or (ii) \$5 million and who enters the transaction “to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.” *See* Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1a.

V. FACTS

14. On October 18, 2010, the Commission adopted new regulations implementing certain provisions of the Dodd-Frank Act and the CRA. For the purposes of retail forex transactions, the new regulations, among other things, require RFEDs to register with the CFTC.

15. On information and belief, O.C.M. solicits or accepts orders from United States customers who are not ECPs to open leveraged forex trading accounts through its website, www.XForex.com. This website’s domain name is registered through a domain name registrar in Scottsdale, Arizona.

16. As advertised on its website, O.C.M. offers three types of forex trading accounts: “Mini Account” that requires a minimum deposit of \$100 with a maximum of \$1,000; “Standard Account” that requires a minimum deposit of \$1,000 with a maximum of \$10,000; and “VIP Account” that requires a minimum deposit of \$10,000 with no maximum. In addition, O.C.M. offers two different types of trading platforms: a web based platform with an account minimum

of \$100; and the Meta Trader 4 platform with an account minimum of \$400. The amounts required to fund these accounts are quoted in United States dollars.

17. O.C.M. utilizes the Meta Trader 4 trading platform, a platform commonly used by RFEDs.

18. A customer can open a trading account by submitting information online through O.C.M.'s website. To open an account by submitting information online, the website directs a customer to click on a link entitled "Open Live Account," which takes the customer to a page where there are fields for email, first name, last name, phone number, mobile number, and country. The default country is the United States. There is a button titled "Apply," but the customer must fill out all of the fields in order to successfully press or engage the button.

19. In addition, a customer may request to be contacted by O.C.M. On the contact page, there are fields for name, email, telephone number, preferred contact time, and country. Again, the default country is the United States.

20. Under the "Terms and Conditions" link on the website, O.C.M. lists the agreement between O.C.M. and its customer ("Customer Agreement"). Under the Customer Agreement, the base currency is the United States dollar. In addition, currency deposits are converted to United States dollars.

21. In its Customer Agreement, O.C.M. fails to inquire whether its customers are "eligible contract participants" and, in fact, appears to allow individual customers who do not have total assets of \$5 million to open accounts.

22. In its Customer Agreement, O.C.M. fails to inquire into whether the prospective customer has the ability or the business need to accept foreign currency into his or her bank account.

23. According to the website, a customer may fund his or her account using credit cards or wire transfer.

24. Upon information and belief, O.C.M. acts and/or offers to act as a counterparty to U.S. customers in leveraged retail forex transactions.

25. Upon information and belief, the forex transactions O.C.M. engages in neither result in delivery within two days nor create an enforceable obligation to deliver between a seller and a buyer who have the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these forex contracts remain open from day to day and ultimately are offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

26. Thus, O.C.M. has been and is acting as an RFED and continues to do so by soliciting or accepting orders from U.S. customers who are not ECPs in connection with leveraged retail forex transactions.

27. By the date of the filing of this complaint, O.C.M. has not registered with the Commission as an RFED or in any other capacity.

28. Furthermore, O.C.M. is not exempt from registration.

VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE:

VIOLATION OF SECTION 2(c)(2)(C)(iii)(I)(aa) OF THE ACT, AS AMENDED: FAILURE TO REGISTER

29. Paragraphs 1 through 28 are realleged and incorporated herein.

30. During the relevant period, O.C.M. solicits or accepts orders from non-ECPs in connection with leveraged or margined forex transactions at an RFED. O.C.M. engages in this conduct without being registered as an RFED, as required by Regulation 5.3(a)(6)(i), 17 C.F.R.

§ 5.3(a)(6)(i) (2011), all in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa).

31. Each day that O.C.M. engages in this conduct since October 18, 2010 is alleged as a separate and distinct violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa).

**COUNT TWO:
VIOLATION OF REGULATION 5.3(a)(6)(i)
FAILURE TO REGISTER AS A RETAIL FOREIGN EXCHANGE DEALER**

32. Paragraphs 1 through 28 are realleged and incorporated herein.

33. During the relevant period, O.C.M. is, or offers to be, the counterparty to retail forex transactions without being registered as an RFED, in violation of Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011).

34. Each day that O.C.M. fails to register as an RFED since October 18, 2010 is alleged as a separate and distinct violation of Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011).

VII. RELIEF REQUESTED

WHEREFORE, the CFTC respectfully requests that this Court, as authorized by Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, and pursuant to its own equitable powers, enter:

- A. An order finding that O.C.M. violated Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa);
- B. An order finding that O.C.M. violated Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011);

- C. An order of permanent injunction prohibiting O.C.M., and any other person or entity associated with it, from engaging in conduct in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa);
- D. An order of permanent injunction prohibiting O.C.M., and any other person or entity associated with it, from engaging in conduct in violation of Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011);
- E. An order of permanent injunction prohibiting O.C.M., and any other person or entity associated with it or its website, from operating its website while in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa), and Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011);
- F. An order of permanent injunction prohibiting O.C.M., and any successor thereof, from, directly or indirectly:
- 1) Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1a);
 - 2) Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2011)) (“commodity options”), swaps, and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for its own personal account or for any account in which it has a direct or indirect interest;

- 3) Having any commodity futures, options on commodity futures, commodity options, swaps, and/or forex contracts traded on its behalf;
- 4) Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options, commodity options, swaps, and/or forex contracts;
- 5) Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, swaps, and/or forex contracts;
- 6) Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and
- 7) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent, or any other officer or employee of any person registered, exempted from registration or required to be registered with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).

- G. Enter an order requiring that O.C.M., as well as any of its successors, disgorge to any officer appointed or directed by the Court all benefits received, including, but not limited to, salaries, commissions, loans, fees, revenues, and trading profits derived, directly or indirectly, from acts or practices that constitute violations of the Act, as amended, and the Regulations, including pre and post-judgment interest;
- H. Enter an order directing O.C.M., and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied

or express, entered into between it and any of the customers whose funds were received by them as a result of the acts and practices, which constituted violations of the Act, as amended, and the Regulations as described herein;

I. Enter an order requiring O.C.M. to pay civil monetary penalties under the Act, to be assessed by the Court, in amounts of not more than the greater of: (1) triple its monetary gain for each violation of the Act, as amended, and the Regulations or (2) \$140,000 for each violation committed on or after October 23, 2008;

J. Enter an order requiring O.C.M. to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

K. Enter an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Respectfully submitted,

COMMODITY FUTURES TRADING COMMISSION

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