

consents to the use of the findings in this Order in this or any other proceeding brought by the Commission or to which the Commission is a party.¹

II.

The Commission finds the following:

A. Summary

From late 1999 through at least October 2001 (“the relevant period”), Global Capital Investment LLC (“GCI”), based in New York, New York, and its President, Mitchell Vazquez (“Vazquez”) have solicited and accepted funds from retail investors for the purpose of engaging in speculative trading of foreign exchange (“forex”) futures and options. The transactions were not consummated on or subject to the rules of a board of trade designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity.

GCI and Vazquez, through the firm's website, offered contracts that were foreign currency futures contracts. Until March 2001, GCI and Vazquez also offered to the retail public off-exchange foreign currency options contracts through the same website. GCI and another forex entity acted as counterparties to the futures and options contracts and were neither permitted counterparties under the Act nor Commission-designated or regulated contract markets or trading facilities. GCI's futures and options customers were mostly, if not all, retail customers. Therefore, GCI and Vazquez sold illegal futures and options contracts in violation of the Act.

¹ GCI and Vazquez do not consent to the use of the Offers or this Order, or the findings to which they have consented in their Offers, as the sole basis for any other proceeding brought by the Commission other than a proceeding brought to enforce the terms of this Order. GCI and Vazquez do not consent to the use of their Offers or this Order, or the findings to which they have consented in their Offers, by any other person or entity in this or any other proceeding. The findings to which GCI and Vazquez have consented in their Offers, as contained in this Order, are not binding on any other person or entity in any other proceeding.

B. Respondents

Global Capital Investment LLC (“GCI”), 67 Wall Street, 22nd Floor, New York, NY 10005 is a Delaware limited liability company that was formed in December 1996 under the name Strategic Capital Management (“SCM”). SCM changed its name to GCI in October 1998. GCI has never been registered with the Commission in any capacity under either name.

Mitchell Vazquez (“Vazquez”), 18 Thunder Lake Road, Wilton, CT 06897, is President and Chief Executive Officer of GCI, as well as its registered agent and sole director. He has never been registered with the Commission in any capacity.

C. Facts

GCI and Vazquez sold illegal forex futures contracts to members of the general public since early 1999, and have continued to do so throughout the period December 21, 2000 through at least October 2001. Vazquez owned and operated GCI, which solicited customers through its website. On that website, GCI stated that they transacted nearly \$2 billion per month in “spot foreign exchange.”

The GCI website invited customers to trade through GCI’s Internet trading platform. The platform provided customers with an online computer interface that enabled them to view real-time prices and trade. Customers typically used the online platform to trade their accounts. Using the online platform, customers opened accounts with a minimum investment of \$2,000, viewed bid and ask prices set by GCI and Vazquez (between December 2000 and March 2001 another forex entity acted as the counterparty and set the prices) for various currency pairs, and bought and sold positions.

GCI and Vazquez sold the forex futures contracts as currency pairs (*e.g.* US Dollars and British Pounds) in lot sizes of 100,000 units of the base currency (the base currency is the first currency in any pair quoted). The value of a single pip was \$10 for currencies quoted in U.S.

Dollars.² GCI permitted customers to open standard accounts with \$2,000 and, in May 2001, started offering “mini accounts” with as little as \$250. Customers were permitted to trade if they maintained a minimum account margin of \$1,000 (1%) per lot (\$100,000 worth of the base currency) in a standard account, or \$50 (0.5%) per lot (\$10,000 worth of the base currency) in a mini account, making these contracts highly leveraged and highly accessible to retail customers. GCI made margin calls after March 2001 (the other forex entity made the margin calls prior to that time) when the client’s equity dropped below a certain specified sum per lot. The contracts had no expiration date, and customers could hold a position open indefinitely. Customers did not need to make or receive physical delivery of the foreign currency in order to close a position, and in fact no customers took delivery. Instead, they closed positions by engaging in offsetting trades. As such, physical delivery was not a goal or expectation of the customer. In short, the bulk of GCI’s customers were retail customers who invested to speculate on the prices of foreign currency, rather than to take delivery of foreign currency, and did so by buying and selling these foreign currency futures contracts.

Starting by at least December 21, 2000 and continuing through March 2001, GCI and Vazquez also solicited customers to enter into off-exchange forex options transactions. The GCI website contained customer solicitations for forex options trading, although options customers apparently consummated transactions solely through telephone orders with GCI, rather than through the online trading platform.

Between December 2000 and March 2001, GCI acted solely as an intermediary for its customers’ foreign currency futures transactions, and another unregistered entity (the other forex

² A pip refers to the last significant decimal place used for price negotiations and in currency transactions, is usually equivalent to one ten-thousandth. For example, a price change from 43.6750 to 43.6755 involves a change of five pips.

entity referenced above) acted as the counterparty. Since approximately March 2001, GCI was the counterparty to the vast majority of its customers' futures and options trades, and these trades cleared through GCI. Regardless of whether GCI or the other unregistered forex entity was the transaction counterparty, none of these transactions – futures or options – was conducted on or subject to the rules of a board of trade designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity.

Vazquez, as GCI's founder, President, CEO, and registered agent, oversaw and controlled GCI's operations. As GCI's website once stated, "Mr. Vazquez is responsible for development of GCI's dealing operations and trading programs, and overseeing worldwide operations." Vazquez created GCI's website and was responsible for its contents. Vazquez also typically established the premium, strike price and other features of the options that GCI sold.

D. Legal Discussion

1. Violations of Section 4(a) of the Act.

Section 4(a) of the Act makes it unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery unless such transaction is conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity.

Section 2(c)(2)(B)(ii) of the Act, as amended by Commodity Futures Modernization Act of 2000, Appendix E, to Public L. No. 106-554 (December 21, 2000) ("CFMA") clarified the Commission's jurisdiction over foreign currency transactions between members of the general public who are not eligible contract participants and counterparties that are not regulated

financial institutions. In this case, GCI's customers were retail customers rather than eligible contract participants, as that term is defined in Section 1a(12) of the Act,³ and GCI did not constitute one of the enumerated regulated entities that may act as a counterparty under the Act.⁴

When determining whether the foreign currency contracts marketed by the proposed defendants are futures contracts, "[t]he transaction must be viewed as a whole with a critical eye toward its underlying purpose." *CFTC v. Co Petro Mkg. Group, Inc.*, 680 F.2d 573, 581 (9th Cir. 1982), *relied upon in Motzek v. Monex Int'l. Ltd.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,095 at 41,626 (CFTC June 1, 1994) (endorsing a holistic approach).

GCI and Vazquez offered customers foreign currency contracts containing the characteristics of a futures contract. Futures contracts are contracts for the purchase or sale of a commodity for delivery in the future at a price established when the contract is initiated, with both parties to the transaction obligated to fulfill the contract at the specified price. The contracts are entered into

³ Section 1a(12) defines an eligible contract participant in relevant part as

- (i) a financial institution;
- (ii) an insurance company regulated by a State . . .
- (iii) an investment company subject to regulation . . .
- (iv) a commodity pool that has (I) total assets exceeding \$5,000,000 . . .
- (v) a corporation . . .
- (vi) an employee benefit plan . . .
- (vii) a governmental entity . . .
- (viii) a broker or dealer subject to regulation under the Securities Exchange Act . . .
- (ix) a futures commission merchant subject to regulation under this Act. . .
- (x) a floor broker . . .
- (xi) individual who has total assets in excess of: (I) \$10 million; or (II) \$5 million and who enters the transaction to manage the risk associated with the asset he owns. . .

⁴ The Act, as amended by the CFMA, denies the Commission jurisdiction over retail sales of foreign currency futures or options contracts if the counterparty, or the person offering to be the counterparty, of the retail customer is:

- (I) a financial institution;
- (II) a broker or securities dealer registered with the Securities & Exchange Commission . . .
- (III) an associated person of a broker or dealer registered with the Securities & Exchange Commission . . .
- (IV) an insurance company . . .
- (V) a financial holding company . . .
- (VI) an investment bank holding company

principally to assume or shift price risk without transferring the underlying commodity. Although the contracts provide for settlement by delivery, delivery can be avoided by offset, cash settlement or cancellation. *See CFTC v. Noble Metals Int'l.*, 67 F.3d 766, 772 (9th Cir. 1995) (futures contracts provide that a specific quantity at a specific price will be ‘delivered’ to the buyer at a specific date, and allow the purchaser to enter into offsetting transactions as means to avoid taking delivery); *CFTC v. Hanover Trading Corp.*, 34 F. Supp.2d 203, 205 (S.D.N.Y. 1999) (the lack of an expectation that delivery of the physical commodity will be made is an important factor indicating the presence of a futures contract); *In re Stovall* [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶20,941 at 23,777 (CFTC Dec. 6, 1979); *CFTC v. Co Petro*, 680 F.2d 573, 581 (9th Cir. 1982) (contracts were “speculative ventures” that were “marketed to those for whom delivery was not an expectation,” and therefore futures contracts).

The foreign currency contracts offered and sold by GCI and Vazquez exhibited the characteristics of futures contracts. The contracts involved the purchase and sale of foreign currency for future delivery, and customers entered into contracts at a price determined at the time the customers entered into the contract. Through these contracts, customers captured price movements and speculated on fluctuations in the value of the currencies without transferring the underlying currency. Ultimately, the contracts were settled by offsetting transactions, and never resulted in delivery. The foreign currency contracts that GCI and Vazquez offered were therefore commodity futures contracts. *CFTC v. Noble Wealth Data Info. Servcs*, 90 F. Supp. 2d 676, 688 (D. Md. 2000) (foreign currency contracts that were for future delivery, could be satisfied by offset or other means to avoid delivery, with prices that were set at the time the contract was entered into, and that were engaged in primarily to speculate, were futures contracts); *accord CFTC v. Hanover Trading Corp.*, 34 F. Supp. 2d at 205.

Accordingly, GCI and Vazquez offered illegal foreign currency futures contracts to the retail public that were not conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or as a derivative transaction execution facility for such commodity, in violation of Section 4(a) of the Act.

2. Violations of Section 4c(b) and Regulations 32.11 and 33.3.

Section 4c(b) of the Act provides that “no person shall offer to enter into or confirm the execution of, any transaction involving any commodity regulated under this Act which is of the character of, or is commonly known to the trade as, an ‘option,’ ... contrary to any rule, regulation or order of the Commission prohibiting any such transaction.”⁵ Commission Regulation 32.11(a) prohibits the solicitation or acceptance of funds or orders in connection with the purchase or sale of any commodity option, unless in accordance with Regulation 32.11(b), which allows certain options transactions on or subject to the rules of a contract market or foreign board of trade. Commission Regulation 33.3(a) states that it is unlawful for any person to offer to enter into, enter into, confirm the execution of, or maintain a position in, any commodity option unless the commodity option is traded on or subject to the rules of a designated contract market. As detailed above, GCI and Vazquez solicited, accepted funds for or entered into foreign currency option transactions with customers that were not traded on a designated contract market.

⁵ By the terms of the Act, as amended by the CFMA, the Commission’s jurisdiction over foreign currency options includes options on physical currencies, and not just options on forex futures contracts. Section 2(c)(2)(B) of the Act, as amended by the CFMA, states: “This Act applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction in foreign currency that – (i) is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange ...).”

III.

Violations

Solely on the basis of the consent evidenced by the Offers, and without any adjudication on the merits, the Commission finds that GCI and Vazquez each violated Sections 4(a) and 4c(b) of the Act, and Commission Regulations 32.11 and 33.3.

IV. Offers

GCI and Vazquez have each submitted Offers in which, without admitting or denying the allegations contained in the findings in this Order, and without any adjudication of any issue of fact or law, they each:

- A. Acknowledge service of this Order;
 - B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order;
 - C. Acknowledge that failure to comply with the Order shall constitute a violation of the Order and may subject them to injunctive or administrative proceedings under the Act;
 - D. Waive:
 - 1. the filing and service of a Complaint and Notice of hearing;
 - 2. a hearing;
 - 3. all post-hearing procedures;
 - 4. any and all objections to the participation by any member of the Commission's staff in consideration of judicial review by any court;
 - 5. any and all objections to the participation by any member of the Commission's staff in consideration of the Offers;
 - 6. any and all claims of Double Jeopardy based upon the institution of this proceeding or the entry of any order imposing a civil monetary penalty or any other relief;
-

7. any and all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 863, and Part 148 of the Commission's Regulations ("Regulations"), 17 C.F.R. § 148 (2001), relating to or arising from, this proceeding; and

E. Stipulate that the record basis on which this Order accepting the Offers may be entered shall consist solely of the Order, and the findings consented to in the Offers;

F. Consent to the entry of this Order which:

makes findings by the Commission that GCI and Vazquez violated Sections 4(a) and 4c(b) of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 6(a) and 6c(b) (2001), and Sections 32.11 and 33.3 of the Regulations, 17 C.F.R. §§ 32.11 and 33.3 (2001). GCI and Vazquez consent 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 GCI and Vazquez do not consent to the use of this Order, or the findings consented to in the Offers, as the sole basis for any other proceeding brought by the Commission other than a proceeding to enforce the terms of this Order; nor does GCI or Vazquez consent to the use of the Offers, the Order, or the findings consented to in the Offer by any other party in this or any other proceeding.

V. Order

Accordingly, it is hereby **ORDERED** that GCI and Vazquez shall:

A. Cease and desist from violating Sections 4(a) and 4c(b) of the Act and Sections 32.11 and 33.3 of the Regulations;

B. Pay a civil monetary penalty, jointly and severally, in the amount of one hundred thousand dollars (\$100,000) within ten (10) days of the date of the entry of the Order. No

customer funds shall be used to pay this penalty. Such payment shall be made by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and addressed to Dennese Posey, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington D.C. 20581 under cover of a letter that identifies GCI and Vazquez and the name and docket number of the proceeding. A copy of the cover letter and the form of payment shall be simultaneously transmitted to Acting Director Phyllis Cela, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, N.W., Washington D.C. 20581. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2)(2001), if this amount is not paid in full within fifteen (15) days of the due date, GCI and Vazquez shall be automatically prohibited from trading on all contract markets until they have shown to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon, calculated at the Treasury Bill rate prevailing on the date of the Order, to the date payment has been made; and

C. Comply with the following undertakings:

1. not to take any action or make any public statement denying, directly or indirectly, any finding 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 affects GCI or Vazquez's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party;
2. for a period of three (3) years, not to act in any capacity or affiliate in any way with any individual or entity which involves the solicitation, acceptance of orders, transmission of orders, execution, advice related to, pooling of funds, or recommendation

for or of futures contracts, options on futures contracts, or options on foreign currency either (i) for or on behalf of any U.S. citizen or U.S. resident, regardless of where cleared or conducted; or (ii) that are cleared or conducted in the U.S., whether on or off-exchange, regardless of the citizenship or residency of the parties;

3. for a period of five (5) years, to not apply for registration, seek exemption from registration, engage in any activity requiring registration or exemption from registration, except as provided for in Section 4.14(a)(9) of the Commission's Regulations, or act in any capacity or affiliate in any way with any individual or entity that is registered, is required to be registered, or is exempt from registration with the Commission, except as provided for in Section 4.14(a)(9) of the Commission's Regulations, or is acting in any capacity requiring registration with the Commission or exempt from registration, except as provided in Section 4.14(a)(9) of the Commission's Regulations; and

4. within forty-five (45) days of the Commission's acceptance of this Offer GCI and Vazquez will cease all foreign currency operations, and within sixty (60) days of the Commission's acceptance of this Offer will submit a sworn affidavit ("Sworn Affidavit") with documentation, as described below, verifying, respectively, that Vazquez has demonstrated compliance with paragraphs II.F.2 – 4 of his Offer and the undertakings set forth in paragraph III.B of his Offer, and that GCI also has:

- a. removed all websites from the Internet;
- b. ceased soliciting new customers;
- c. ceased accepting new funds, except as necessary to liquidate accounts;
- d. closed and liquidated all existing customer accounts by one of the following:
 - i) return of all existing equity to customers;

ii) for U.S. citizens and U.S. residents, transferred all existing equity to a Commission Registered Futures Commission Merchant; or

iii) copies of all checks, wire transfers, or other debit instruments withdrawn from the bank accounts over the amount of \$1000, and, to the extent not otherwise for non-U.S. citizens or non-U.S. residents, transferred all existing equity to an off-shore entity that conducts its foreign currency exchange business in compliance with applicable laws;

5. the following documentation, for the time period from thirty (30) days preceding the date GCI and Vazquez sign their Offers until forty-five (45) days following the date GCI and Vazquez sign their Offers, shall accompany the Sworn Affidavit:

- a. all bank account statements for all bank accounts held by or for GCI's benefit, or holding GCI or Vazquez customer funds ("bank accounts");
- b. copies of all checks, wire transfers, or other debit instruments deposited into the bank accounts over the amount of \$1000 and, to the extent not otherwise identified, indicating from whom the funds were received and with an explanation of the purpose of each deposit;
- c. identified, indicating to whom the funds were paid and with an explanation of the purpose of each payment;
- d. a list of all customers and account numbers as of the date of the signing of the Offers, with an explanation as to the date, amount, and method of the return or transfer of their funds; and

- e. a copy of all correspondence sent to customers since October 1, 2001, relating to the transfer of positions, account closures, GCI and Vazquez's settlement offers, or the Commission's Order. .

Unless otherwise specified, the provisions of this Order shall be effective on this date.

Dated: February 27, 2002

BY THE COMMISSION

Catherine D. Dixon
Assistant Secretary of the Commission
Commodity Futures Trading Commission