

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

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In the Matter of	:	
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Reliant Global Markets, LLC	:	CFTC Docket No. <u>03-12</u>
	:	
-and-	:	ORDER INSTITUTING PROCEEDINGS
	:	PURSUANT TO SECTIONS 6(c) AND 6(d)
Maria Cecille Maristela	:	OF THE COMMODITY EXCHANGE
	:	ACT, MAKING FINDINGS AND
Respondents.	:	IMPOSING REMEDIAL SANCTIONS
	:	

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**I.**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Reliant Global Markets, LLC (“RGM”) and Maria Cecille Maristela (“Maristela”), (collectively, “Respondents”), have violated Section 4(a) of the Commodity Exchange Act, as amended (the “Act”), 7 U.S.C. §§ 6(a) (1994). Consequently, the Commission deems it appropriate and in the public interest that an administrative proceeding be, and hereby is, instituted to determine whether Respondents have engaged in the violations set forth in this Order, and whether an Order should be issued imposing remedial sanctions.

In anticipation of the institution of this administrative proceeding, Respondents have submitted a Joint Offer of Settlement (“Joint Offer”) that the Commission has determined to accept. Without admitting or denying the findings in this Order, and prior to any adjudication on the merits, Respondents acknowledge service of this Order and Respondents each consent 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.<sup>1</sup>

**II.**

The Commission finds the following:

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<sup>1</sup> Respondents do not consent to the use of the Joint Offer or this Order, or the findings to which they have consented in their Joint Offer, as the sole basis for any other proceeding brought by the Commission other than a proceeding brought to enforce the terms of this Order. Respondents do not consent to the use of their Joint Offer or this Order, or the findings to which they have consented in their Joint Offer, by any other person or entity in this or any other proceeding. The findings to which Respondents have consented in their Joint Offer, as contained in this Order, are not binding on any other person or entity in any other proceeding.

## A. SUMMARY

From December 21, 2000 through at least September 2001, RGM and its President, Maristela, used funds previously solicited from retail customers and accepted new funds from an existing customer (collectively, "RGM customers") for the purpose of engaging in speculative trading of futures on foreign exchange ("forex futures") contracts. These 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. RGM acted as the counterparty to these transactions but did not constitute a counterparty permitted under the Act to offer and sell forex futures contracts to the retail public. Therefore, Respondents offered and sold illegal futures contracts in violation of the Act.

## B. RESPONDENTS

Respondent **Reliant Global Markets, LLC** is a California limited liability corporation with its principal place of business at 3550 Wilshire Boulevard, Suite 1781, Los Angeles, CA during the relevant time period. RGM has never been registered with the Commission in any capacity.

Respondent **Maria Cecille Maristela** resides at 420 Burchett Street, #5, Glendale, California 91203. She has been the owner and operator of RGM since its incorporation in January 2000. She has never been registered with the Commission in any capacity.

## C. FACTS

Commencing prior to December 21, 2000, Maristela owned and operated RGM as a foreign currency trading firm in Pasadena, California. From December 21, 2000 through at least September 2001, Respondents illegally offered and sold forex futures contracts to the retail public.

During this time period, Respondents maintained an omnibus trading account in RGM's name at a futures commission merchant ("FCM") for the purpose of trading forex futures contracts. In that account, Respondents traded the funds of customers they had solicited prior to December 21, 2000. Respondents also solicited funds from new customers and one existing customer for the purposes of trading forex futures contracts. Respondents deposited the newly solicited funds of the existing customer in the omnibus account. (The new customers' funds, not at issue in this order, were deposited directly into accounts at the FCM in the name of the specific customers). Respondents did not disclose to the FCM that they were trading customer funds in the omnibus account and did not fully disclose to those customers that their funds would be traded through the FCM.

The contracts offered by Respondents involved the purchase and sale of foreign currency for future delivery. Customers entered into contracts at a price determined at the time the customers entered into the contract. The contracts had no expiration date and customers could hold a position open indefinitely. Customers did not need to make or receive physical delivery,

and, indeed, did not expect to make or receive physical delivery of the foreign currency, in order to close a position. In fact, no customers took delivery. 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.

Respondents' customers were mostly, if not, all retail customers. None of the transactions at issue were 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 and such contracts were not executed or consummated by or through a member of such contract market. Rather RGM acted as the counterparty to the transactions but RGM did not constitute a counterparty permitted under the Act to offer and sell forex futures contracts to retail customers

## **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 (1) 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; (2) such contract is executed on consummated through a contract market; and (3) such contract is evidenced by a record in writing.

Section 2(c)(2)(B)(ii) of the 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 futures transactions between members of the general public who are not eligible contract participants and counterparties that are not regulated financial institutions. In this case, RGM's customers were retail customers rather than eligible contract participants, as that term is defined in Section 1a(12) of the CFMA,<sup>2</sup> and RGM, which was

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<sup>2</sup> 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

acting as the counterparty, did not constitute one of the enumerated regulated entities that may act as a counterparty under the Act.<sup>3</sup> Accordingly, the Commission has jurisdiction over the transactions, if such transactions involved futures contracts.

The foreign currency contracts offered and sold by Respondents are futures contracts. 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). 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 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 at 581 (contracts were "speculative ventures" that were "marketed to those for whom delivery was not an expectation," and therefore were futures contracts).

The foreign currency contracts offered and sold by Respondents 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. *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.*

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who enters the transaction to manage the risk associated with the asset he owns. . .

<sup>3</sup> The CFMA denies the Commission jurisdiction over retail sales of foreign currency 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 ...
- (III) an associated person of a broker or dealer ...
- (IV) an insurance company ...
- (V) a financial holding company ...
- (VI) an investment bank holding company .....

*Hanover Trading Corp.*, 34 F. Supp. 2d at 205. The foreign currency contracts that Respondents offered therefore were futures contracts.

Accordingly, Respondents 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.

### **III. Joint Offer**

RGM and Maristela have submitted a Joint Offer 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:

- 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 this Order shall constitute a violation of this 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. judicial review by any court;
  - 5. all objections to the participation by any member of the Commission's staff in consideration of the Joint Offer;
  - 6. 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. 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 is entered consists of the Order and the findings to which Respondents have consented in their Joint Offer, which are incorporated in this Order; and
- F. Consent to the Commission's issuance of this Order, which makes findings, as set forth herein, and orders that: (1) Respondents shall cease and desist from violating the provision of the Act that they have been found to have violated; (2) for a period of two years, Respondents shall not trade on or subject to the rules of any registered entity and all registered entities shall refuse Respondents all trading privileges; and (3) Respondents shall comply with their undertakings as set forth in the Joint Offer and incorporated in this Order including, but not limited to: (a) agreeing to not take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or finding or conclusion in this Order or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; (b) agreeing never to apply for registration or seek exemption from registration with the Commission in any capacity, except as provided for in Regulation 4.14(a)(9), and never to engage in any activity requiring registration or exemption from registration, unless such exemption is pursuant to Regulation 4.14(a)(9); (c) diligently supervising the handling by their partners, officers, employees, agents, or persons occupying a similar status or performing a similar function, of all commodity interest accounts introduced by them, and diligently supervising all other activities of its partners, officers, employees, and agents, or persons occupying a similar status or performing a similar function relating to RGM's business; and (d) cooperating fully and expeditiously with the Commission and its staff in this proceeding and any other investigation, civil litigation or administrative matter related to the subject matter of this proceeding including (1) requests for authentication of documents; (2) requests for any documents within Respondents possession, custody or control; (3) requests to produce any current office, director or employee of Respondents for interviews, depositions or testimony, and to provide testimony or assistance at any trial related to the subject matter of this proceedings; and (4) in fulfilling all aspects of their obligations as described in the Joint Offer.

#### IV.

#### Violations

Solely on the basis of the consent evidenced by the Joint Offer, and without any adjudication on the merits, the Commission finds that Respondents each violated Section 4(a) of the Act.

V.

**Order**

Accordingly, it is hereby **ORDERED** that RGM and Maristela shall:

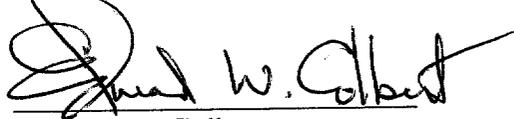
- A. Cease and desist from violating Section 4(a) of the Act;
- B. for a period of two years be prohibited from trading on or subject to the rules of any registered entity and all registered entities shall refuse Respondents all trading privileges; and
- C. Comply with the following undertakings:
  1. 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 RGM or Maristela'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 two (2) years, not to apply for registration, seek exemption from registration, engage in any activity requiring registration or exemption from registration, except as provided in Section 4.14(a)(9) of the Commission 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 in Section 4.14(a)(9) of the Commission Regulations, or is acting in any capacity requiring registration with the Commission or exempt from registration, except as provided in Section 4.1.4(a)(9) of the Commission Regulations; provided that they may continue to 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 in trading foreign currency futures or options for retail customers.
  3. to diligently supervise the handling by their partners, officers, employees, agents, or persons occupying a similar status or performing a similar function, of all commodity interest accounts, including accounts trading futures on foreign currency contracts, options on futures on foreign currency contracts or options on foreign currency, carried, operated, advised, or introduced by RGM and Maristela, and to diligently supervise all other activities of its partners, officers, employees, and agents, or persons occupying a similar status or performing a similar function relating to RGM's business; and

4. to cooperate fully and expeditiously with the Commission and its staff in this proceeding and any other investigation, civil litigation or administrative matter related to the subject matter of this proceeding including (1) request for authentication of documents; (2) requests for any documents within Respondents possession, custody or control; (3) requests to produce any current office, director or employee of Respondents for interviews, depositions or testimony, and to provide testimony or assistance at any trial related to the subject matter of this proceedings; and (4) in fulfilling all aspects of their obligations as described in the Joint Offer.

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

Dated: June 6, 2003

BY THE COMMISSION



Edward W. Colbert

Deputy Secretary to the Commission  
Commodity Futures Trading Commission