

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

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9:48 am, Sep 27, 2013

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In the Matter of: )  
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Vision Financial Markets LLC, )  
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Respondent. )  
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CFTC Docket No. 13-39

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

**I.**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from in or about August 2008 to at least June 2009 (the “Relevant Period”), Vision Financial Markets LLC (“Vision” or “Respondent”) violated Section 4d(a)(2) of the Commodity Exchange Act, 7 U.S.C. § 6d(a)(2), and Commission Regulations (“Regulations”) 1.10(d)(1)(v) and (vi), 1.12(h), 1.20 and 1.26, 17 C.F.R. §§ 1.10(d)(1)(v) and (vi), 1.12(h), 1.20 and 1.26. Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Vision engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

**II.**

In anticipation of the institution of an administrative proceeding, Vision 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, Vision consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.<sup>1</sup>

<sup>1</sup> Respondent consents to the entry of this Order and 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 Respondent does not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the

### III.

The Commission finds the following:

#### A. SUMMARY

Vision, registered with the Commission as a futures commission merchant (“FCM”) and with the Securities and Exchange Commission (“SEC”) as a broker-dealer (“BD”), violated the Commodity Exchange Act and Commission Regulations by being an FCM that failed to segregate commodity futures and options customers’ funds. Vision, after using commodity futures and options customer funds to purchase securities, failed to account for and hold those securities separately for its customers. Instead, Vision commingled the securities with its own funds and the funds of its securities customers in Vision’s participant account held in its own name at the Depository Trust Company (“DTC”) (“Vision’s DTC Participant Account”). As such, Vision failed to comply with requirements for holding and segregating customer funds as set forth in Section 4d(a)(2) of the Commodity Exchange Act, 7 U.S.C. § 6d(a)(2), and Regulations 1.20 and 1.26, 17 C.F.R. §§ 1.20 and 1.26.

Vision’s violations of FCM segregation requirements went undetected during the Relevant Period because Vision did not report to its designated self-regulatory organization (“DSRO”) or the Commission that the amount on deposit in segregated accounts was less than the total amount required by the Commodity Exchange Act and misstated in monthly segregation statements filed with the Commission the location and manner in which the customer funds were being held. Vision represented to the Commission that the customer funds were “deposited in segregated funds bank accounts,” when, in fact, certain Vision personnel involved with preparing and submitting the monthly segregation statements knew that the assets were not held at a bank but actually were held in Vision’s account at DTC, which included funds of Vision and others. Vision’s failure to notify its DSRO and the Commission and its misstatements violated Regulations 1.10(d)(1)(v) and (vi) and 1.12(h), 17 C.F.R. §§ 1.10(d)(1)(v) and (vi) and 1.12(h).

Vision’s segregation violations and misstatements were uncovered in June 2009 during a regulatory examination by Vision’s DSRO, after which Vision was informed of the segregation violations. Vision thereafter restated its monthly segregation statements, deducting the value of the customer funds held in the DTC account from its calculation of total segregated funds. From August 2008 through November 2008, deducting the value of these funds from Vision’s total funds in segregation did not cause the firm to be under-segregated because Vision had enough excess in segregation to meet its regulatory requirement. However, from December 2008 through May 2009, when Vision had invested larger amounts of customer funds in securities, excluding their value from Vision’s calculation of total funds in segregation put Vision in a position of under-segregation for the entire six (6) month period. Prior to the CME’s examination and throughout the Relevant Period, Vision did not notify its DSRO or the CFTC that it was under-segregated.

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findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

## **B. RESPONDENT**

Vision is a limited liability company organized in Delaware with offices in New York, NY, Chicago, IL and Stamford, CT. Throughout the Relevant Period, Vision was registered with the Commission as an FCM and commodity pool operator, and with the SEC as a self-clearing, carrying BD. Vision's operations as an FCM ("Vision's FCM") and its operations as a BD ("Vision's BD") throughout the Relevant Period were business units within the same legal entity, Vision Financial Services LLC.

## **C. FACTS**

Vision, acting as an FCM, received money, securities and property from its customers to margin, guarantee, or secure the customers' futures and options trades. In August 2008, Vision began investing certain commodity futures and options customer funds in corporate notes and bonds (the "Invested Customer Funds"), which are among the investments described in Commission Regulation 1.25, 17 C.F.R. § 1.25. The corporate notes and bonds were purchased by Vision's BD. When these purchases were settled, the Invested Customer Funds were held within Vision's DTC Participant Account. DTC is a clearing corporation and depository that provides securities settlement and custody services. Once the transactions were completed, Vision recorded the Invested Customer Funds as assets in an in-house account titled "Vision Financial Markets LLC – Customer Segregated Funds Account, Qualifying CFTC Reg. 1.25 Investments" (the "In-House Account") within Vision's BD, but the securities remained in Vision's DTC Participant Account. On August 18, 2008, around the time when the FCM purchased the first of the securities with customer funds, Vision sent a letter to itself (from Vision's FCM to Vision's BD) and countersigned to itself, purporting to acknowledge that the In-House Account was a customer segregated account contemplated by CFTC Rule 1.26. The letter referred to the "Vision Financial Markets LLC – Customer Segregated Funds Account" by name and account number, and stated in relevant part:

We wish to advise you that our account with you, known as "Vision Financial Markets LLC – Customer Segregated Funds Account," represents funds, obligations, customer owned securities, investment securities, and/or property deposited there belonging to our commodity customers. As a condition to opening this account with organization, it must be maintained in compliance with the provisions of the Commodity Exchange Act / Commodity Futures Trading Commission . . . customer owned securities . . . deposited with you in this account shall be segregated and treated as belonging to our commodity customers rather than belonging to us. . . .

The letter did not reference Vision's BD participant account at DTC. Vision also sent itself periodic account statements reflecting the activity recorded in the In-House Account, receiving account statements from itself in the same format as did the securities customers of Vision's BD.

Vision's DTC Participant Account was held in Vision's name throughout the Relevant Period, and was not titled to identify the funds as belonging to commodity futures and options

customers. Vision's DTC Participant Account held firm-owned securities and securities owned by securities customers in addition to the Invested Customer Funds.

Throughout the Relevant Period, Vision filed Statements of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges (the "Segregation Statement") as part of its Form 1-FR FCM filings. On each of Vision's monthly Segregation Statements during the Relevant Period, Vision reported the Invested Customer Funds under the category "Deposited in segregated funds bank accounts." Certain Vision personnel involved in the submission of the Segregation Statements knew at the time the Invested Customer Funds were being reported under this category that the funds were in fact being held in Vision's DTC Participant Account and were being internally booked to Vision's In-House Account. Certain Vision personnel further knew that neither DTC nor Vision was a bank and that Vision's DTC Participant Account was not titled to identify the funds as belonging to customers trading on U.S. contract markets. Likewise, Vision personnel knew that Vision did not have a written statement from any depository, dated and signed by an officer of such depository, acknowledging its understanding that the funds in the account are commodity customers' funds held pursuant to the provisions of the Act. This information was material and its omission from the Forms 1-FR was misleading.

During Vision's annual examination in June 2009, Vision's DSRO informed Vision that Invested Customer Funds were not being held in accordance with Commission Regulations because Vision lacked the required acknowledgement letter and the DTC account title did not specifically identify the securities as belonging to commodities customers. In response to the DSRO's concerns, Vision transferred the securities to a properly documented, customer-segregated account at a bank, completing the transfer by June 24, 2009.

At no time prior to the DSRO's examination of Vision did Vision inform its DSRO or the Commission that the Invested Customer Funds were not being held in a segregated account, that the funds held in segregated accounts were therefore less than the amount Vision was required to hold in segregated accounts, or that customer funds were commingled with funds belonging to Vision and Vision's securities customers.

#### IV.

#### LEGAL DISCUSSION

##### **A. Failure to Segregate Customer Funds in Violation of Section 4d(a)(2) of the Commodity Exchange Act and Commission Regulations 1.20 and 1.26**

Section 4d(a)(2) of the Act, 7 U.S.C. §§ 6d(a), makes it unlawful for an FCM to solicit or accept orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market unless it treats and deals with all money, securities and property as belonging to such customers and accounts separately for such money, securities and property. Additionally, Section 4d(a)(2) of the Act specifically prohibits an FCM from commingling customer money, securities and property with its own funds.

Commission Regulation 1.20, 17 C.F.R. § 1.20, requires that all customers' funds be separately accounted for, properly segregated, and treated as belonging to such customers, and not commingled with the funds of any other person. Commission Regulation 1.20 further provides that no person that has received customer funds for deposit in a segregated account may hold, dispose of, or use any such funds as belonging to any person other than the option or commodity customers of the futures commission merchant which deposited such funds.

Commission Regulation 1.26, 17 C.F.R. § 1.26, requires that FCMs which invest customer funds in instruments described in Commission Regulation 1.25, 17 C.F.R. § 1.25, shall separately account for such instruments and segregate such instruments as belonging to such commodity or option customers.

Vision by and through its agents, officials and employees did not comply with its obligation to segregate, treat customer funds as belonging to such customers and not commingle customer funds with its own funds and the funds of any other person by holding customer funds in the DTC Participant Account titled in the name of Vision with its own funds and the funds of securities customers.

By this conduct, Vision violated Section 4d(a)(2) of the Act, 7 U.S.C. § 4d(a)(2), and Commission Regulations, 1.20 and 1.26, 17 C.F.R. §§ 1.20 and 1.26.

**B. Failure to Notify Vision's DSRO and the Commission of Vision's Under-segregation in Violation of Commission Regulation 1.12(h)**

Commission Regulation 1.12(h), 17 C.F.R. § 1.12(h), requires that, whenever an FCM knows or should know that the total amount of its funds on deposit in segregated accounts on behalf of customers is less than the total amount of such funds required by the Commodity Exchange Act and Commission Regulations to be on deposit in segregated or secured amount account on behalf of such customers, the registrant must report such deficiency immediately by telephone notice, confirmed immediately in writing by facsimile notice, to the registrant's designated self-regulatory organization and the principal office of the Commission.

Vision, by and through its agents, officials and employees did not comply with its obligation to notify its DSRO and the Commission that the total amount of its funds on deposit in segregated accounts on behalf of customers was less than the total amount of such funds required by the Commodity Exchange Act and Commission Regulations to be on deposit in a segregated or secured amount account on behalf of such customers. Vision knew or should have known that the funds on deposit were less than the amount required. At no time prior to the DSRO's examination of Vision in June 2009 did Vision inform its DSRO or the Commission that the Invested Customer Funds were not being held in a segregated account, that the funds held in segregated accounts were therefore less than the amount Vision was required to hold in segregated accounts, or that customer funds were commingled with funds belonging to Vision and Vision's securities customers. Only after Vision's DSRO identified the segregation deficiency to Vision did Vision provide a notice of under-segregation to the Commission.

By this conduct, Vision violated Commission Regulations, 1.12(h), 17 C.F.R. § 1.12(h).

**C. Failure to File Correct Form 1-FR, Including Statement of Funds in Segregation for Customers, in Violation of Commission Regulation 1.10(d)(1)(v) and (vi)**

Regulation 1.10(d)(1)(v), 17 C.F.R. § 1.10(d)(1)(v), requires, in pertinent part, that an FCM must file a Form 1-FR that includes a “statement of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges.” Regulation 1.10(d)(1)(vi), 17 C.F.R. § 1.10(d)(1)(vi), further requires an FCM to submit “such further material information as may be necessary to make the required statements and schedules not misleading.”

By the conduct alleged herein, Defendants Vision by and through its agents, officials and employees made incorrect statements in its Form 1-FR filed monthly from September 2008 through May 2009 by reporting the Invested Customer Funds as being “Deposited in segregated funds bank account,” when in fact the invested customer funds were being held in Vision’s DTC Participant Account, not at a bank, and were commingled with the funds of Vision and others.

By this conduct, Vision violated Commission Regulation 1.10(d)(1)(v) and (vi), 17 C.F.R. § 1.10(d)(1)(v)(vi).

**V.**

**FINDINGS OF VIOLATION**

Based on the foregoing, the Commission finds that, during the Relevant Period, Vision violated Section 4d(a)(2) of the Act, 7 U.S.C. § 6d(a)(2), and Commission Regulations 1.10(d)(1)(v) and (vi), 1.12(h), 1.20 and 1.26, 17 C.F.R. §§ 1.10(d)(1)(v) and (vi), 1.12(h), 1.20 and 1.26.

**VI.**

**OFFER OF SETTLEMENT**

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

- A. Acknowledges receipt of 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 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2011), 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, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), 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;
- 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/have 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)(2) of the Act, 7 U.S.C. § 6d(a)(2), and Commission Regulations 1.10(d)(1)(v) and (vi), 1.12(h), 1.20 and 1.26, 17 C.F.R. §§ 1.10(d)(1)(v) and (vi), 1.12(h), 1.20 and 1.26;
  2. orders Respondent to cease and desist from violating Section 4d(a)(2) of the Act, 7 U.S.C. § 6d(a)(2), and Commission Regulations 1.10(d)(1)(v) and (vi), 1.12(h), 1.20 and 1.26, 17 C.F.R. §§ 1.10(d)(1)(v) and (vi), 1.12(h), 1.20 and 1.26;
  3. orders Respondent to pay a civil monetary penalty in the amount of \$525,000, plus post-judgment interest; 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 VII of this Order.

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

## VII.

### ORDER

**Accordingly, IT IS HEREBY ORDERED THAT:**

- A. Vision and its successors and assigns shall cease and desist from violating Section 4d(a)(2) of the Act, 7 U.S.C. § 6d(a)(2), and Commission Regulations 1.10(d)(1)(v) and (vi), 1.12(h), 1.20 and 1.26, 17 C.F.R. §§ 1.10(d)(1)(v) and (vi), 1.12(h), 1.20 and 1.26.
- B. Vision pay a civil monetary penalty in the amount of \$525,000, plus post-judgment interest (the "CMP Obligation"), within ten (10) business days of the date of entry of this Order. If the CMP Obligation is not paid in full within ten (10) business days of the date of entry of this Order, 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 (2006). Vision shall pay the CMP Obligation 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:

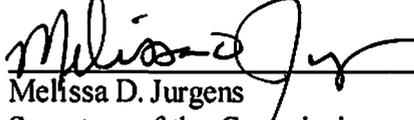
Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Accounts Receivables --- AMZ 340  
E-mail Box: 9-AMC-AMZ-AR-CFTC  
DOT/FAA/MMAC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
Telephone: (405) 954-5644

If payment is to be made by electronic funds transfer, Vision shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Vision 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. Vision 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.

- C. Vision and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Vision and its successors and assigns agree 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 Vision's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Vision and its successors and assigns 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. **Partial Satisfaction:** Vision understands and agrees that any acceptance by the Commission or the Monitor of partial payment of Vision'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.
  
3. **Change of Address/Phone:** Until such time as Vision satisfies in full its CMP Obligation as set forth in this Order, Vision and its successors and assigns shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten (10) calendar days of the change.

By the Commission.

  
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Melissa D. Jurgens  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: September 27, 2013