

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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1:54 pm, Sep 03, 2013

In the Matter of:

MACQUARIE FUTURES USA LLC,

Respondent.

) CFTC Docket No. 13-30

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

I.

The Commodity Futures Trading Commission (“**Commission**”) has reason to believe that, on October 15, 2012, Macquarie Futures USA LLC (“**Macquarie**” or “**Respondent**”) violated Commission Regulation (“**Regulation**”) 30.7, 17 C.F.R. § 30.7 (2012). 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.

II.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement of Macquarie Futures USA LLC (“**Offer**”), which the Commission has determined to accept. Without admitting or denying any of the findings and conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, and Making Findings and Imposing Remedial Sanctions (“**Order**”), and acknowledges service of this Order.¹

III.

The Commission finds the following:

¹ 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 in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than 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 findings consented to in the Offer or this Order, by any other party in any other proceeding.

A. Summary

Macquarie is a registered futures commission merchant (“**FCM**”) located in New York, New York. Pursuant to Regulation 30.7(a), 17 C.F.R. § 30.7(a) (2012), an FCM must account for and maintain money, securities and property (collectively “**funds**”) in an amount at least sufficient to cover or satisfy all of its current obligations to foreign futures and options customers in a separate “**secured account.**” Pursuant to Section 4d(a)(2) of the Act, as amended, to be codified at 7 U.S.C. § 6(d)(a)(2), FCMs must also separately account for and maintain funds received from customers trading on U.S. exchanges in a “**segregated account.**”

Macquarie had a secured fund deficiency of \$36,623,893, as of close of business on Monday, October 15, 2012, due to the industry-wide conversion of ICE Clear Europe Limited (“**ICE Clear Europe**”) over-the-counter (“**OTC**”) energy swaps margined in a Regulation 30.7 secured class to futures contracts margined in a segregated account. The deficiency was discovered by Macquarie when preparing the company’s 30.7 (Foreign Secured) Calculation Report (“**30.7 Report**”) and statement of segregated funds (“**Daily Segregation Statement**”) on October 16, 2012. Macquarie immediately notified the Commission, the National Futures Association (“**NFA**”), and various exchanges, and undertook measures to avoid this deficiency in the future.

B. Respondent

Macquarie Futures USA LLC is a FCM with its principal office located in New York, New York. Macquarie has been registered with the Commission as a FCM since 2006.

C. Facts

On October 15, 2012, ICE Clear Europe converted its existing OTC swaps and options to U.S. exchange-listed futures and options to be listed for trading on ICE Futures U.S. Energy Division and ICE Futures Europe (“**ICE conversion**”). Assets held by ICE Clear Europe corresponding to assets under Part 30 (“**secured**”) funds were to be re-designated as 4d(a) (“**segregated**”) funds. Notice was given to all concerned firms, including Macquarie, with instructions and support provided by ICE Clear Europe.

In anticipation of the ICE conversion, on October 15, 2012, Macquarie transferred open trade equity and net option value from its secured account(s) to its segregated account(s), and kept the corresponding positive cash ledger balance in its secured account(s). Later on October 15, ICE Clear Europe re-designated approximately \$45 million of Macquarie’s secured funds to segregated funds, making these funds segregated assets rather than secured assets. Because all of the secured assets pertaining to the ICE conversion were moved to the segregated account(s), but the entire secured client liability pertaining to the conversion was not timely moved on Macquarie’s books to segregated account(s), a secured deficiency occurred. On October 16, 2012, in preparing its daily secured and segregated calculations, Macquarie discovered that it was undersecured in the amount of \$36.6 million, based on calculations made from balances as of the close of business on October 15.

After learning of the deficiency, Macquarie immediately provided notice to the Commission, the NFA, the CME, ICE Clear Europe and ICE Futures U.S. in accordance with

Regulation 1.12, 17 C.F.R. § 1.12 (2012), telephonically and by letter dated October 16, 2012, advising of its secured fund deficiency. Macquarie also transferred approximately \$45 million from its segregated account to its secured account, curing the deficiency. During the relevant time, Macquarie always maintained sufficient funds to satisfy its secured deficiency, including \$117,184,674 of excess funds in customer segregated accounts. However, funds required to be held in secured accounts are distinct from funds required to be held in segregated accounts. *See* Regulation 30.7(d) (“In no event may money, securities or property representing the foreign futures or foreign options secured amount may be held or commingled and deposited with customer funds in the same account or accounts required to be separately accounted for and segregated pursuant to section 4d of the Act and the regulations thereunder.”). Macquarie also immediately undertook measures to avoid a similar deficiency from occurring in the future.

D. Legal Discussion

Regulation 30.7 requires that, subject to certain exceptions, a FCM must maintain in a separate account or accounts money, securities and property in an amount at least sufficient to cover or satisfy all of its current obligations to foreign futures or foreign options customers denominated as the foreign futures or foreign options secured amount. By failing to have sufficient funds in its secured account on October 15, 2012, Macquarie violated Regulation 30.7.

IV.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Macquarie violated Regulation 30.7, 17 C.F.R. § 30.7 (2012).

V.

OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings 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;
- 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 Part 148 of the Regulations, 17 C.F.R. §§ 148.1, et seq. (2012), 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 2006, 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 claim of double jeopardy based upon 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 upon which this Order is entered shall consist solely of the findings contained in this Order to which the Respondent has consented; and
- 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 Macquarie violated Regulation 30.7, 17 C.F.R. § 30.7 (2012);
 2. orders Macquarie to cease and desist from violating Regulation 30.7, 17 C.F.R. § 30.7 (2012);
 3. orders Respondent to pay a civil monetary penalty in the amount of one hundred fifty thousand dollars (\$150,000), plus post-judgment interest; and
 4. orders Respondent to comply with the conditions and undertakings consented to in the Offer and set forth below in Section VI of this Order.

Upon consideration, the Commission has determined to accept Respondent's Offer.

VI.

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Regulation 30.7, 17 C.F.R. § 30.7 (2012).
- B. Respondent shall pay a civil monetary penalty in the amount of one hundred fifty thousand dollars (\$150,000) ("**CMP Obligation**") within ten (10) days of the date of the entry of this Order. If the CMP Obligation is not paid within ten (10) days of the date of the entry of this Order, then post-judgment interest shall accrue commencing 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). Respondent shall pay the CMP Obligation by making electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made by other than electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

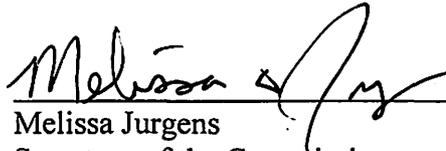
Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables --- AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment by electronic transfer is chosen, Respondent shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the civil penalty with a cover letter that identifies Respondent and the name and docket number of this proceeding. Respondent shall simultaneously submit copies of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, N.W., Washington, D.C. 20581; and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address.

- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings as specified:
1. Actions or Public Statements: Respondent agrees that neither it nor any of its successors or assigns, nor any of its agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any finding or conclusion 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 undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this undertaking.
 2. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of partial payment of 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.

The provisions of this Order shall be effective as of this date.

By the Commission.



Melissa Jurgens
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 3, 2013