

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

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Office of  
Proceedings  
Proposed by: Frank

\_\_\_\_\_) )  
In the Matter of: ) )  
 ) )  
Capital Market Services, LLC, ) CFTC Docket No. 14- \_\_\_\_\_<sup>12</sup>  
 ) )  
Respondent. ) )  
\_\_\_\_\_) )

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 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, at various times between March 2009 and October 2012 (the “relevant period”), Capital Market Services, LLC (“CMS”) violated Section 4f(b) of the Commodity Exchange Act (“CEA”), 7 U.S.C. § 6f(b) (2012), and Commission Regulations (“Regulations”) 1.17(a)(1)(i) and 5.7(a)(1)(i) and (3), 17 C.F.R. §§1.17(a)(1)(i) & 5.7(a)(1)(i), (3) (2013). The Commission, therefore, deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether CMS engaged in the violations set forth herein, and to determine whether any order should be issued that imposes remedial sanctions.

**II.**

In anticipation of the institution of an administrative proceeding, CMS has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings and conclusions herein, CMS consents to the entry of this Order Instituting Proceedings Pursuant to Section 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> CMS 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 CMS 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 CMS consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

### III.

The Commission finds the following:

#### A. Summary

CMS violated Section 4f(b) of the CEA, 7 U.S.C. § 6f(b), and Regulation 1.17(a)(1)(i), 17 C.F.R. § 1.17(a)(1)(i), by failing to meet minimum net capital requirements on an unconsolidated basis during at least sixteen separate months as a futures commission merchant (“FCM”). CMS also violated Regulation 5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i), (3), by failing to meet minimum net capital requirements on an unconsolidated basis during at least one month as a retail forex exchange dealer (“RFED”).

#### B. Respondent

**Capital Market Services, LLC** is a limited liability company headquartered in New York, New York. It is a registered FCM (since January 2002) and was a registered RFED from September 2010 to mid-December 2010. CMS also operated as a forex dealer member (“FDM”) with the National Futures Association (“NFA”) from approximately January 2009 until mid-December 2010.

#### C. Facts

##### 1. Background

Because CMS operated as an FCM, FDM and RFED during the relevant period, CMS was subject to various net capital requirements. As an FCM entering orders and executing trades on a variety of designated contract markets on behalf of retail clients, CMS was subject to the net capital requirements of Regulation 1.17(a)(1)(i), 17 C.F.R. § 1.17(a)(1)(i), throughout the relevant period. As pertinent to this matter, Regulation 1.17(a)(1)(i) provides that an FCM “must maintain adjusted net capital equal to or in excess of the greatest of: (A) \$1,000,000; . . . [or] (C) The amount of adjusted net capital required by a registered futures association of which it is a member.” While an FCM and FDM, per Regulation 1.17(a)(1)(i)(C), CMS was subject to the adjusted net capital requirements imposed by the NFA’s FDM Financial Requirements, Section 11 of the NFA Manual. Further, while an RFED and FCM offering or engaging in retail off-exchange forex transactions, CMS was subject to the net capital requirements of Regulation 5.7(a)(1)(i), 17 C.F.R. § 5.7(a)(1)(i).

Accordingly, over the relevant period, CMS’s adjusted net capital requirement ranged between \$15,000,000 and approximately \$21,000,000 while CMS operated as an FCM, FDM, and/or RFED, and its adjusted net capital requirement was \$1,000,000 while CMS operated as only an FCM.

##### 2. Net Capital Deficiencies

During the relevant period, CMS prepared its financial statements on a consolidated basis with its subsidiaries. Throughout the relevant period, CMS reported on a consolidated basis adjusted net capital in excess of the amounts it was required to maintain by Regulations

1.17(a)(1)(i) and 5.7(a)(1)(i) and (3), 17 C.F.R. §§ 1.17(a)(1)(i) & 5.7(a)(1)(i), (3). However, during at least seventeen separate months of the relevant period, CMS, on a stand-alone basis, was not in compliance with its adjusted net capital requirements. CMS failed to meet its unconsolidated net capital requirements during the relevant period by amounts ranging from \$200,511 to \$19,355,089.

### **3. Remedial Actions**

On December 5, 2012, the NFA requested that CMS compute its adjusted net capital on a stand-alone basis. In responding to this request, CMS discovered that it was not in compliance with its adjusted net capital requirement on a stand-alone basis, as required by Section 4f(b) of the CEA, 7 U.S.C. § 6f(b), and Regulation 1.17(a)(1)(i), 17 C.F.R. § 1.17(a)(1)(i). By reducing market exposure, CMS regained adjusted net capital compliance by the end of the day and further bolstered its capital position by receipt of a \$450,000 capital contribution on December 6, 2012.

In settling this matter, the Commission has taken into account the corrective action CMS undertook after its deficiencies were discovered and CMS's cooperation.

## **IV.**

### **LEGAL DISCUSSION**

#### **A. Financial Requirements for FCMs and RFEDs**

CMS has been registered as an FCM since January 2002. Under Section 4f(b) of the CEA, 7 U.S.C. § 6f(b), "no person desiring to register as futures commission merchant shall be so registered unless he meets such minimum financial requirements as the Commission may by regulation prescribe as necessary to insure his meeting his obligations as a registrant, and each person so registered shall at all times continue to meet such prescribed minimum financial requirements . . . ."

Regulation 1.17(a)(1)(i)(A) and (C), 17 C.F.R. § 1.17(a)(1)(i)(A), (C), provides that an FCM must maintain adjusted net capital equal to or in excess of the greatest of \$1,000,000 or various other measures, including the "amount of adjusted net capital required by a registered futures association of which it is a member." Between January 2009 and mid-December 2010, while an FDM with the NFA, CMS was subject to the NFA's FDM Financial Requirements, Section 11 of the NFA Manual, which imposed adjusted net capital requirements that ranged between \$15,000,000 and approximately \$21,000,000.

CMS also was registered as an RFED from September 2010 through mid-December 2010. Part 5 of the Regulations requires each RFED and FCM offering or engaging in retail forex transactions to, among other things, comply with the minimum financial requirements set forth in Regulation 5.7, 17 C.F.R. § 5.7. Relevant to this Order, Regulation 5.7(a)(1)(i), 17 C.F.R. § 5.7(a)(1)(i), sets that net capital requirement for RFEDs at \$20,000,000 plus five percent of its total retail forex obligation in excess of \$10,000,000 at all times. As such, CMS's adjusted net capital requirement as an RFED was approximately \$21,000,000.

## B. CMS Failed to Meet Its Minimum Financial Requirements

Throughout the relevant period, CMS reported, on a consolidated basis with its parent Capital Market Services Group LLC and other subsidiaries, adjusted net capital in excess of the amounts it was required to maintain by Regulations 1.17(a)(1)(i) and 5.7(a)(1)(i) and (3), 17 C.F.R. §§ 1.17(a)(1)(i) & 5.7(a)(1)(i), (3). During at least seventeen separate months of the relevant period, however, CMS, on a stand-alone basis, was not in compliance with its adjusted net capital requirements. This violated Section 4f(b) of the CEA, 7 U.S.C. § 6f(b), and Regulations 1.17(a)(1)(i) and 5.7(a)(1)(i) and (3), 17 C.F.R. §§ 1.17(a)(1)(i) & 5.7(a)(1)(i), (3), because even when a consolidated computation of adjusted net capital is permitted, each registrant included within the consolidation must at all times be in compliance with the adjusted net capital requirement to which it is subject, pursuant to Regulation 1.17(f)(3)(iv), 17 C.F.R. §1.17(f)(3)(iv).

Specifically, CMS failed to meet its net capital requirements, on an unconsolidated basis, during the relevant period, as follows:

Dates	Regulation Setting Net Capital Requirement	Net Capital Deficiencies (Range)
March 2009, June 2009, September 2009, December 2009, March 2010, June 2010	Regulation 1.17(a)(1)(i)(C)	\$442,313 to \$13,061,445
September 2010 <sup>2</sup>	Regulation 5.7(a)(1)(i)	\$19,355,089
December 2010, March 2011, September 2011, December 2011, May 2012, June 2012, July 2012, August 2012, September 2012, October 2012	Regulation 1.17(a)(1)(i)(A)	\$200,511 to \$8,898,750

## V.

### FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the relevant period, CMS violated Section 4f(b) of the CEA, 7 U.S.C. § 6f(b), and Regulations 1.17(a)(1)(i) and 5.7(a)(1)(i) and (3), 17 C.F.R. §§ 1.17(a)(1)(i) & 5.7(a)(1)(i), (3).

<sup>2</sup> During September 2010, CMS also violated Regulation 1.17(a)(1)(i)(C), 17 C.F.R. § 1.17(a)(1)(i)(C), by failing to meet the identical net capital requirements imposed therein.

## VI.

### OFFER OF SETTLEMENT

CMS 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 the 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 (Supp. V. 2011) and 28 U.S.C. § 2412 (Supp. V 2011), 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 (2013), 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 CMS has consented in the Offer; 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 CMS violated Section 4f(b) of the CEA, 7 U.S.C. § 6f(b), and Regulations 1.17(a)(1)(i) and 5.7(a)(1)(i) and (3), 17 C.F.R. §§ 1.17(a)(1)(i) & 5.7(a)(1)(i), (3);
2. orders CMS to cease and desist from violating Section 4f(b) of the CEA, 7 U.S.C. § 6f(b), and Regulations 1.17(a)(1)(i) and 5.7(a)(1)(i) and (3), 17 C.F.R. §§ 1.17(a)(1)(i) & 5.7(a)(1)(i), (3);
3. orders CMS to pay a Civil Monetary Penalty (“CMP”) of two hundred seventy-five thousand dollars (\$275,000), plus post-judgment interest; and
4. orders CMS and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and set forth below in Part VII of this Order.

Upon consideration, the Commission has determined to accept CMS’s Offer.

## VII.

### ORDER

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

- A. CMS shall cease and desist from violating Section 4f(b) of the CEA, 7 U.S.C. § 6f(b), and Regulations 1.17(a)(1)(i) and 5.7(a)(1)(i) and (3), 17 C.F.R. §§ 1.17(a)(1)(i) & 5.7(a)(1)(i), (3);
- B. CMS shall pay a CMP in the amount of two hundred seventy-five thousand dollars (\$275,000) within ten (10) days of the date of entry of this Order (“CMP Obligation”). If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then 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). CMS 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, CMS shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. CMS shall accompany payment of the CMP Obligation with a cover letter that identifies CMS and the name and docket number of this proceeding. CMS 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.

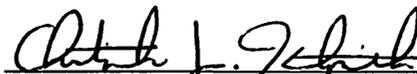
- C. CMS and its successors and assigns shall comply with the following undertakings as consented to and set forth in the Offer:
1. **Public Statements:** CMS agrees that neither it nor any of its successors and assigns, or agents or employees under their authority or control shall take any action or 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 CMS's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. CMS and its successors and assigns shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.
  2. **Future Cooperation with the Commission:** CMS and its successors and assigns agree that it will cooperate fully and expeditiously with the Commission and its staff, including its Division of Enforcement, with regard to this Order, and in any investigation, civil litigation, or administrative matter brought by the Commission related to the subject matter of this proceeding or any current or future investigation related thereto. As part of such cooperation with the Commission, CMS agrees to:
    - a. Comply fully, promptly, completely, and truthfully, subject to any legally recognized privilege, with any inquiries or requests for information and documents;
    - b. Provide authentication of documents and other evidentiary material; and
    - c. Use its best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of CMS, regardless of the individual's location and at such location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such proceeding, trial, or investigation.
  3. **Partial Satisfaction:** CMS understands and agrees that any acceptance by the Commission of partial payment of CMS's CMP Obligation shall not be deemed a

waiver of its obligation to make further payments pursuant to the Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

4. Change of Address/Phone: Until such time as CMS satisfies in full its CMP Obligation as set forth in this Order, CMS 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.

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

By the Commission.



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Christopher J. Kirkpatrick  
Deputy Secretary of the Commission  
Commodity Futures Trading Commission

Dated: April 7, 2014