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

In the Matter of: ) CFTC DOCKET NO. 11-188  
Forex Capital Markets Ltd., ) ORDER INSTITUTING PROCEEDINGS  
                                  ) PURSUANT TO SECTIONS 6(c) AND 6(d)  
                                  ) OF THE COMMODITY EXCHANGE  
                                  ) ACT, AS AMENDED, MAKING  
                                  ) FINDINGS AND IMPOSING REMEDIAL  
                                  ) SANCTIONS  
Respondent. )  
                                  )

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**I.**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from October 18, 2010 to October 29, 2010, Forex Capital Markets Ltd. (“FXCM Ltd.” or “Respondent”) violated Commission Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i). 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 violation 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 (the “Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or 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, As Amended, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.<sup>1</sup>

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<sup>1</sup> Respondent consents 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 findings or conclusions consented to in the Offer or this Order, by any other party in any other proceeding.

### **III.**

The Commission finds the following:

#### **A. SUMMARY**

During the period from October 18, 2010 to October 29, 2010 (the “Relevant Period”), FXCM Ltd. acted as a retail foreign exchange dealer (“RFED”) by acting as a counterparty to non-Eligible Contract Participants (“ECPs”) in connection with leveraged retail forex transactions without registering with the Commission, in violation of Commission Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i).

#### **B. RESPONDENT**

**FXCM Ltd.** is a company based in the United Kingdom with its principal place of business located at Northern & Shell Building, 10 Lower Thames Street, London, EC3R 6AD, United Kingdom. FXCM Ltd. also operates the website [www.fxcm.co.uk](http://www.fxcm.co.uk), where it offers to act as a counterparty to, and solicits potential customers to engage in, among other things, online retail forex transactions. Throughout the Relevant Period, FXCM Ltd. was a Financial Services Authority (“FSA”) regulated, investment firm authorized by the FSA to conduct a retail foreign exchange dealing business. FXCM Ltd. has never been registered with the Commission in any capacity.

#### **C. FACTS**

On October 18, 2010, the Commission enacted new regulations implementing certain provisions of the Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§701-774, 124 Stat. 1376 (enacted July 21, 2010), and the Food, Conservation, and Energy Act of 2008 Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 1 *et seq.*, with respect to off-exchange leveraged retail foreign currency (“forex”) transactions. For purposes of retail forex transactions, the new regulations, among other things, require RFEDs to register with the Commission.

During the Relevant Period, FXCM Ltd. acted as a counterparty to United States customers who were not ECPs in connection with leveraged retail forex transactions. During the Relevant Period, FXCM Ltd. failed to register with the Commission as an RFED or in any other capacity, in violation of Commission Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i).

#### **D. LEGAL DISCUSSION**

The Commission’s registration requirements for commodity professionals are a cornerstone of the regulatory framework enacted by Congress to protect the public. Registration is the linchpin of the Commission’s ability to perform its statutory functions of monitoring and enforcing the Act. The Commission has recognized that the operation of an unregistered entity is

a serious violation of the Act and a threat to the integrity of the industry. Registration is the kingpin in this statutory machinery, giving the Commission the information about participants in commodity trading which it so vitally requires to carry out its other statutory functions of monitoring and enforcing the Act. *See CFTC v. British American Commodity Options Corp.*, 560 F.2d 135, 139-140 (2d Cir. 1977), *cert. denied*, 438 U.S. 905 (1978). Thus, failure to register with the Commission is a serious offense, and not a mere technical violation of the Act. *See CFTC v. Heritage Capital Advisory Services., Ltd.*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,627 at 26,387 (N.D. Ill. Nov. 8, 1982).

Commission Regulation 5.1(h)(1), to be codified at 17 C.F.R. § 5.1(h)(1), defines an RFED as any person that is, or offers to be, the counterparty to a retail forex transaction, except for financial institutions, registered broker-dealers, futures commission merchants who are primarily or substantially engaged in on-exchange futures, insurance companies, financial holding companies or investment bank holding companies (collectively “enumerated entities”). Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i), requires any RFED, as defined in Commission Regulation 5.1(h)(1), to be codified at 17 C.F.R. § 5.1(h)(1), to register with the Commission.

During the Relevant Period, FXCM Ltd. acted as an RFED without registering. It acted as the counterparty to United States customers who were not ECPs in connection with leveraged retail forex transactions. Furthermore, FXCM Ltd. did not qualify as one of the enumerated entities.

By this conduct, FXCM Ltd. violated Commission Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i).

#### IV.

#### FINDING OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, FXCM Ltd. violated Commission Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i), by acting as an RFED and failing to register as such with the Commission.

#### V.

#### OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein: acknowledges receipt of service of this Order; admits the jurisdiction of the Commission with respect to all matters set forth in this Order; and waives the filing and service of a complaint and notice of hearing, a hearing, all post-hearing procedures, judicial review by any court, any and all objections to the participation by any member of the Commission’s staff in the Commission’s consideration of the Offer, 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, 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 (2010), relating to, or arising from, this proceeding, and 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.

Respondent stipulates that the record upon which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer. Respondent consents to the Commission's issuance of this Order, which makes findings by the Commission that Respondent violated Commission Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i); orders Respondent to cease and desist from violating the Commission Regulation that it has been found to have violated; orders Respondent to pay a civil monetary penalty in the amount of One Hundred Forty Thousand Dollars (\$140,000) within ten (10) days of the date of the entry of this Order; and orders Respondent to comply with the conditions and undertakings consented to in the Offer and as set forth in this Order.

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

## VI.

### ORDER

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

1. Respondent shall cease and desist from violating Commission Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i);
2. Respondent shall pay a civil monetary penalty in the amount of One Hundred Forty Thousand Dollars (\$140,000) within ten (10) days of the date of the entry of this Order. If this civil monetary penalty 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. Respondent shall pay its civil monetary penalty 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, 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: Linda Zurhorst  
DOT/FAA/MMAC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
Telephone: (405) 954-5644

If payment by electronic funds 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 monetary penalty with a cover letter that identifies Respondent and the name and docket number of this proceeding. Respondent shall simultaneously transmit copies of the cover letter and the form of payment to: (1) Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; and (2) Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address. In accordance with Section 6(e)(2) of the Act, as amended, to be codified at 7 U.S.C. § 9a(2), if this amount is not paid in full within fifteen (15) days of the due date, Respondent shall be automatically prohibited from the privileges of all registered entities, and, if Respondent is registered with the Commission, such registration shall be automatically suspended until Respondent has shown to the satisfaction of the Commission that payment of the full amount of the civil monetary penalty with post-judgment interest thereon to the date of the payment has been made; and

3. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

**Actions or Public Statements**

Respondent agrees that neither it nor any of its successors or assigns, nor 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 agreement.

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

By the Commission.



David A. Stawick  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: August 3, 2011