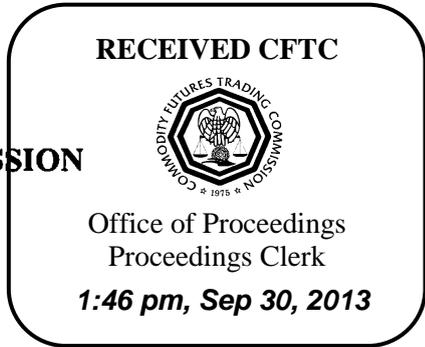


**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**



\_\_\_\_\_)  
**In the Matter of:** )  
 )  
 **FXDirectDealer, LLC,** )  
 )  
 **Respondent.** ) **CFTC Docket No. 13-42**  
\_\_\_\_\_)

**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, between November 2010 and December 2012 (the “relevant period”), FXDirectDealer, LLC (“FXDD”) violated Commission Regulation (“Regulation”) 5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i), (3) (2013), during at least 18 separate months. The Commission, therefore, deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether FXDD 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, FXDD 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, FXDD 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 acknowledge service of this Order.<sup>1</sup>

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<sup>1</sup> FXDD 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 FXDD 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 a proceeding in bankruptcy or to enforce the terms of this Order. Nor does FXDD 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

As a retail foreign exchange dealer (“RFED”) and futures commission merchant (“FCM”) offering or engaging in retail off-exchange foreign currency (“forex”) transactions, FXDD has been subject to Part 5 of the Regulations, 17 C.F.R. pt. 5 (2013), throughout the relevant period and continuing to the present. Pursuant to Part 5 of the Regulations, FXDD must at all times maintain sufficient adjusted net capital as determined by Regulation 5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i), (3) (2013).

During the relevant period, FXDD prepared its financial statements on a consolidated basis with its wholly owned subsidiary, Avatar Capital Group LLC (“Avatar”). Throughout the relevant period, FXDD reported, on a consolidated basis, adjusted net capital in excess of the amounts it was required to maintain by Regulation 5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i), (3) (2013). However, during at least 18 separate months of the relevant period, FXDD, on a stand-alone basis, was not in compliance with its adjusted net capital requirement. This violated Regulation 5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i), (3) (2013), 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.

#### B. Respondent

**FXDirectDealer, LLC** is and was, at all times during the relevant period, a limited liability company that acted as a counterparty to customer accounts trading in forex and provided its customers electronic trading platforms through which its customers entered into forex trades with FXDD. FXDD is headquartered in New York, New York. FXDD has been an FCM since December 10, 2009 and an RFED since September 2, 2010.

#### C. Facts

##### 1. Background

As an RFED and FCM offering or engaging in retail forex transactions beginning with the relevant period and continuing to the present, FXDD is subject to Part 5 of the Regulations. Pursuant to Part 5 of the Regulations, FXDD is required to maintain adjusted net capital of \$20,000,000 plus five percent of its total retail forex obligation in excess of \$10,000,000 at all times. Regulation 5.7(a)(1)(i)(B), (a)(3), 17 C.F.R. § 5.7(a)(1)(i)(B), (3) (2013).

##### 2. Capital Deficiencies Under Regulation 5.7

During the relevant period, FXDD did not maintain its required adjusted net capital during at least 18 separate months. As reflected in month-end adjusted net capital computations,

FXDD was undercapitalized between \$621,343 and \$7,517,826 during the relevant period.<sup>2</sup> Because FXDD prepared its financial statements on a consolidated basis with Avatar, FXDD reported its adjusted net capital computations on a consolidated basis during the relevant period. Accordingly, FXDD apparently did not realize that, on the required stand-alone basis, it failed to satisfy its adjusted net capital requirements throughout most of the relevant period. As a result, FXDD violated Regulation 5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i), (3) (2013).

### **3. Remedial Actions**

On November 30, 2012, the National Futures Association (“NFA”) requested that FXDD compute its adjusted net capital on a stand-alone basis. In responding to this request, FXDD discovered that it was not in compliance with its adjusted net capital requirement on a stand-alone basis, as required by Regulation 5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i), (3) (2013). Accordingly, the following business day after the NFA’s request, FXDD transferred funds from Avatar to FXDD’s operating cash account such that it became in compliance with Regulation 5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i), (3) (2013).

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

## **IV.**

### **LEGAL DISCUSSION**

#### **A. Background**

On October 18, 2010, the Commission enacted Part 5 of the Regulations to implement certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”)<sup>3</sup> and the Food, Conservation and Energy Act of 2008 (“CRA”)<sup>4</sup> regarding forex transactions. These Regulations require 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.

#### **B. Adjusted Net Capital Requirements**

Regulation 5.7(a)(1)(i) requires each RFED and FCM offering or engaging in retail forex transactions to maintain adjusted net capital of at least \$20,000,000 plus five percent of its total retail forex obligation in excess of \$10,000,000 at all times. *See* Regulation 5.7(a)(3), 17 C.F.R.

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<sup>2</sup> FXDD did not provide the Commission daily, stand-alone computations of its adjusted net capital.

<sup>3</sup> 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).

<sup>4</sup> Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008, §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008)).

§ 5.7(a)(3) (2013). Regulation 5.7(a)(1)(ii), 17 C.F.R. § 5.7(a)(1)(ii) (2013), further requires that an RFED's adjusted net capital be calculated in accordance with Regulation 1.17, 17 C.F.R. § 1.17 (2013), the provision governing the calculation of adjusted net capital for FCMs. Although Regulation 1.17(f)(2)(ii), 17 C.F.R. § 1.17(f)(2)(ii) (2013), permits a registrant to prepare a consolidated computation of adjusted net capital under certain circumstances, "each . . . registrant included within the consolidation shall at all times be in compliance with the adjusted net capital requirement to which it is subject." Regulation 1.17(f)(3)(iv), 17 C.F.R. § 1.17(f)(3)(iv) (2013).

FXDD failed to maintain sufficient adjusted net capital, on a stand-alone basis, in at least 18 separate months during the relevant period, in violation of Regulation 5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i), (3) (2013).

## V.

### FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that FXDD violated Regulation 5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i), (3) (2013), during the Relevant Period.

## VI.

### OFFER OF SETTLEMENT

FXDD 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 Regulations, 17 C.F.R. §§ 148.1-30 (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 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 upon which this Order is entered shall consist solely of the findings contained in this Order, to which FXDD 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 FXDD violated Regulation 5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i), (3) (2013);
  2. orders FXDD and its successors and assigns to cease and desist from violating Regulation 5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i), (3) (2013);
  3. orders FXDD to pay a civil monetary penalty in the amount \$275,000, plus post-judgment interest; and
  4. orders FXDD 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 FXDD's Offer.

## VII.

### ORDER

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

- A. FXDD and its successors and assigns shall cease and desist from violating Regulation 5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i), (3) (2013).
- B. FXDD shall pay a civil monetary penalty in the amount of \$275,000 within ten (10) days of the date of entry of this Order (the "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). FXDD 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, FXDD shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. FXDD shall accompany payment of the CMP Obligation with a cover letter that identifies FXDD and the name and docket number of this proceeding. FXDD 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.

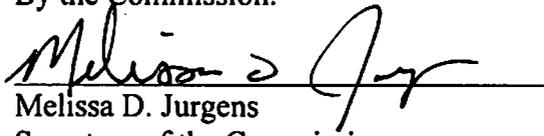
C. FXDD and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

1. **Public Statements:** FXDD and its successors and assigns agree that neither they nor any of their 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 FXDD's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. FXDD and its successors and assigns shall undertake all steps necessary to ensure that all of their agents and employees under their authority or control understand and comply with this agreement.
2. **Future Cooperation with the Commission:** FXDD and its successors and assigns agree that it will cooperate fully and expeditiously with the Commission and its staff, including the Division, 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, FXDD 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 FXDD, 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: FXDD understands and agrees that any acceptance by the Commission of partial payment of FXDD'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.
4. Change of Address/Phone: Until such time as FXDD satisfies in full its CMP Obligation as set forth in this Order, FXDD 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.

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

Dated: September 30, 2013