

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

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11:42 am, Sep 24, 2014

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In the Matter of: )  
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FXDirectDealer, LLC, )  
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Respondent. )  
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CFTC Docket No. 14-28

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, at various times between at least March 20, 2013 and at least February 14, 2014 (the “relevant period”), FXDirectDealer, LLC (“FXDD”) violated Commission Regulations (“Regulations”) 1.17(e)(1), 5.7(a)(1)(i) and (3), and 166.3, 17 C.F.R. §§ 1.17(e)(1); 5.7(a)(1)(i), (3); and 166.3 (2013), and the Commission’s September 30, 2013 Order issued in *In re FXDirectDealer, LLC*, [2013-2014 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 32,836 at 73,938 (“Prior FXDD Order”). 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 acknowledges service of this Order.<sup>1</sup>

<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

At various times during the relevant period, FXDD failed to meet its minimum financial requirements. As a result, FXDD violated Regulations 1.17(e)(1) and 5.7(a)(1)(i) and (3), as well as the Prior FXDD Order that, among other things, required FXDD to “cease and desist from violating Regulation 5.7(a)(1)(i) and (3).” *In re FXDirectDealer, LLC*, [2013-2014 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 73,940.<sup>2</sup> Although FXDD’s violations did not result in customer losses, FXDD’s repeated failures to meet its minimum financial requirements evidence a lack of adequate internal controls and a failure to diligently supervise the handling of matters related to FXDD’s business as a Commission registrant, in violation of Regulation 166.3.

#### 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 a futures commission merchant (“FCM”) since December 10, 2009 and a retail foreign exchange dealer (“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 Parts 1, 5, and 166 of the Regulations. Pursuant to Part 5 of the Regulations, FXDD is required to maintain ANC 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). Moreover, Regulation 1.17 requires FXDD to maintain 120% of required ANC immediately following any withdrawal of FXDD equity capital.

##### 2. Capital Deficiencies Under Regulation 5.7(a)(1)(i) and (3)

From March 20, 2013 to December 13, 2013, FXDD included in its ANC computations for purposes of Regulation 5.7(a) approximately \$1.5 million in unsecured receivables accruing from over-the-counter forex transactions held in an account at an entity that was not among the regulated entities enumerated by Regulation 5.7(b)(2)(iii), 17 C.F.R. § 5.7(b)(2)(iii) (2013). Unsecured receivables accruing from over-the-counter forex transactions in this account,

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<sup>2</sup> In the Prior FXDD Order, the Commission found that FXDD, on a stand-alone basis, was undercapitalized between \$621,343 and \$7,517,826 for 18 months during the period November 2010 to December 2012. *In re FXDirectDealer, LLC*, [2013-2014 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 73,939. FXDD had improperly reported adjusted net capital (“ANC”) on a consolidated basis with a wholly-owned subsidiary. *Id.*

however, needed to be excluded in any computation of ANC for purposes of Regulation 5.7(a). After excluding such funds from FXDD's ANC, FXDD was undercapitalized for 96 days between April 24, 2013 and December 13, 2013 by amounts ranging from \$727 to \$1,149,500. As a result, FXDD violated Regulation 5.7(a)(1)(i) and (3) on all 96 days. Additionally, FXDD's undercapitalization violated the Prior FXDD Order on 41 days between September 30, 2013 and December 13, 2013.

### **3. Prohibited Withdrawals Under Regulation 1.17(e)(1)**

A principal of FXDD withdrew FXDD equity capital in the amounts of \$100,000 on January 13, 2014; \$25,000 on January 29, 2014; and \$125,000 on February 14, 2014. Immediately following each of the three equity withdrawals, FXDD failed to maintain 120% of its ANC, as required by Regulation 1.17(e)(1).

### **4. Remedial Actions**

After FXDD determined on December 12, 2013 that it could not include the \$1.5 million held at an entity that was not among the regulated entities enumerated by Regulation 5.7(b)(2)(iii) in its ANC computations for purposes of Regulation 5.7(a), FXDD immediately transferred the bulk of those funds and an additional cash contribution to FXDD's operating account such that FXDD became in compliance with Regulation 5.7(a)(1)(i) and (3). That same day, FXDD also notified the Commission regarding its ANC deficiencies.

In settling this matter, the Commission considered that no customer losses resulted from FXDD's violations; the corrective action that FXDD undertook immediately after its ANC deficiencies were discovered; that, on May 2, 2014, FXDD sold its U.S. book of business to another Commission-registered RFED; that, in July 2014, FXDD requested to withdraw its registrations as an FCM and RFED; and that, as part of this Order, FXDD undertakes for three years after entry of this Order to not reapply for registration or claim exemption from registration as an FCM or RFED or engage in any activity requiring such registrations or exemptions.

## **IV.**

### **LEGAL DISCUSSION**

#### **A. Background**

Each FCM must comply with the minimum financial requirements set forth in Regulation 1.17. *See* Regulation 1.17(a)(3), 17 C.F.R. § 1.17(a)(3) (2013). Additionally, each RFED and FCM offering or engaging in retail forex transactions must comply with the minimum financial requirements set forth in Regulation 5.7. *See* Regulation 5.7(a)(3).

## **B. FXDD Failed to Maintain Its Minimum Financial Requirements**

### **1. ANC Violations**

Regulation 5.7(a)(1)(i) requires each RFED and FCM offering or engaging in retail forex transactions to maintain ANC 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 also* Regulation 5.7(a)(3) (stating that each FCM that offers or engages in retail forex transactions and each RFED “must be in compliance with [Regulation 5.7] at all times”). Regulation 5.7 further requires, *inter alia*, that for purposes of calculating ANC, current assets must exclude unsecured receivables accruing from certain over-the-counter forex-related transactions, unless the unsecured receivable is from an eligible contract participant who is among the regulated entities enumerated by Regulation 5.7(b)(2)(iii), 17 C.F.R. § 5.7(b)(2)(iii) (2013).

After excluding FXDD’s unsecured receivables accruing from over-the-counter forex transactions in an account held at an entity not enumerated by Regulation 5.7(b)(2)(iii), FXDD was undercapitalized by amounts ranging from \$727 to \$1,149,500 for 96 days between April 24, 2013 and December 13, 2013. Further, for 41 days between September 30, 2013 and December 13, 2013, FXDD’s failures to maintain sufficient ANC also violated the Prior FXDD Order’s requirement that FXDD “cease and desist from violating Regulation 5.7(a)(1)(i) and (3).” *In re FXDirectDealer, LLC*, [2013-2014 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 73,940.

### **2. Equity Withdrawal Violations**

Regulation 1.17(e)(1) prohibits a withdrawal of firm equity capital if, following the withdrawal, the firm’s ANC will be less than 120% of its required ANC. FXDD’s ANC fell below the 120% equity withdrawal restriction by approximately \$3.1 million on January 14, 2014, following the January 13, 2014 equity withdrawal; \$2.7 million on January 30, 2014, following the January 29, 2014 equity withdrawal; and \$2.3 million on February 18, 2014, following the February 14, 2014 equity withdrawal. Accordingly, each of the three FXDD equity withdrawals violated Regulation 1.17(e)(1).

## **C. FXDD Failed to Supervise Diligently Its Officers, Employees, and Agents Responsible for Monitoring and Maintaining Its Minimum Financial Requirements**

Regulation 166.3 requires each Commission registrant to “diligently supervise the handling by its partners, officers, employees and agents . . . of all commodity interest accounts carried, operated, advised, or introduced by the registrant and all other activities of its partners, officers, employees and agents . . . relating to its business as a Commission registrant.” A violation under Regulation 166.3 is an independent violation for which no underlying violation is necessary. *See In re Rosenthal Collins Group, LLC*, [2012 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 32,166 at 69,274 (Apr. 12, 2012) (citing *In re Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,194 at 45,744 (Dec. 10, 1997)).

A violation of Regulation 166.3 is demonstrated by showing either that: (1) the registrant's supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. See *In re Rosenthal Collins Group, LLC*, ¶ 27,194 at 45,744; *In re Murlas Commodities*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,485 at 43,161 (CFTC Sept. 1, 1995); *In re GNP Commodities, Inc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,219 (CFTC Aug. 11, 1992) (providing that, even if an adequate supervisory system is in place, Regulation 166.3 can still be violated if the supervisory system is not diligently administered), *aff'd sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993); *In re Paragon Futures Ass'n*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC Apr. 1, 1992) ("The focus of any proceeding to determine whether Rule 166.3 has been violated will be on whether [a] review [has] occurred and, if it did, whether it was diligent"). Evidence of violations that "should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly" is probative a failure to supervise. *In re Paragon Futures*, ¶ 25,266 at 38,850.

Throughout the relevant period, with respect to its compliance with ANC requirements, FXDD employed an inadequate supervisory system and failed to perform its supervisory duties diligently, in violation of Regulation 166.3. Specifically, FXDD failed to put into place procedures reasonably designed to ensure compliance with the minimum financial requirements set forth in Regulations 1.17 and 5.7. FXDD further failed to adequately and diligently supervise its employees, officers and agents with respect to the handling and monitoring of FXDD's compliance with those requirements. These supervisory failures prevented FXDD from detecting and deterring repeated and extended violations of the minimum capital requirements.

## V.

### FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that FXDD violated Regulations 1.17(e)(1), 5.7(a)(1)(i) and (3), and 166.3, as well as Section VII.A of the Prior FXDD Order.

## 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 Regulations 1.17(e)(1), 5.7(a)(1)(i) and (3), and 166.3, as well as Section VII.A of the Prior FXDD Order;
2. orders FXDD and its successors and assigns to cease and desist from violating Regulations 1.17(e)(1), 5.7(a)(1)(i) and (3), and 166.3, as well as Section VII.A of the Prior FXDD Order;
3. orders FXDD to pay a civil monetary penalty in the amount of six hundred thousand dollars (\$600,000), 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:
1. Regulations 1.17(e)(1), 5.7(a)(1)(i) and (3), and 166.3; and
  2. Section VII.A of the Prior FXDD Order.
- B. FXDD shall pay a civil monetary penalty in the amount of six hundred thousand dollars (\$600,000) 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 Nikki Gibson 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. Registration Prohibition: In July 2014, FXDD filed requests to withdraw from registration as an FCM and RFED. Upon the effective date of the withdrawals and continuing for three years from entry of this Order, FXDD shall not reapply for registration or claim exemption from registration with the Commission as an FCM or RFED, or engage in any activity requiring such registrations or exemptions from registration with the Commission.
  2. Board Approval of ANC Filings: For a period of three (3) years following entry of this Order, each of FXDD's monthly ANC filings shall be accompanied by a signed resolution of FXDD's Board of Managers which states that FXDD's Board of Managers has reviewed and approved the contents of such filing.
  3. Public Statements: FXDD agrees 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.
  4. Future Cooperation with the Commission: FXDD agrees 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.



5. 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.
6. 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.
7. Miscellaneous Provisions:
  - a. This Order shall be binding on successors, assigns, beneficiaries, and administrators of FXDD.
  - b. If FXDD fails to comply with any of the conditions or undertakings of this Order, FXDD shall be subject to further proceedings pursuant to Sections 6(c) and 6(e)(2) of the Act, 7 U.S.C. §§ 9 and 9a(2), for violating a Commission Order.

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

By the Commission.

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

Dated: September 24, 2014