

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, GFF was subject to Part 5 of the Regulations, 17 C.F.R. pt. 5 (2013), throughout the relevant period. Pursuant to Part 5 of the Regulations, GFF was required at all times to 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) and (3) (2013).

During the relevant period, GFF prepared its financial statements on a consolidated basis with one or more wholly-owned subsidiaries. Throughout the relevant period, GFF 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) and (3) (2013). However, during various separate months of the relevant period, GFF, 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) and (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

Global Futures & Forex, Ltd. was at all times during the relevant period a corporation 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 GFF. GFF was headquartered in Grand Rapids, Michigan. GFF has been registered with the Commission as an FCM since November 2000 and was registered with the Commission as an RFED from December 2010 to August 2013.

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, GFF was subject to Part 5 of the Regulations. Pursuant to Part 5 of the Regulations, GFF was 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) and (3), 17 C.F.R. § 5.7(a)(1)(i)(B) and (3) (2013).

2. Capital Deficiencies Under Regulation 5.7

During the relevant period, GFF did not maintain its required adjusted net capital during various separate months. Because GFF prepared its financial statements on a consolidated basis with its wholly-owned subsidiaries, GFF reported its adjusted net capital computations on a consolidated basis during the relevant period. GFF’s audited financial statements for 2010 and

2011 indicated that the Statement of the Computation of Net Capital was fairly stated. GFF mistakenly believed that even if on the required stand-alone basis it failed to satisfy its adjusted net capital requirements during the relevant period, it was in capital compliance because its adjusted net capital on a consolidated basis was sufficient to meet its capital obligations. This was not the case. In fact, GFF was required to be in capital compliance on a stand-alone basis, and was not in compliance during much of the relevant period. As a result, GFF violated Regulation 5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i) and (3) (2013).

3. Remedial Actions

On November 28, 2012, the National Futures Association (“NFA”) requested that GFF compute its adjusted net capital on a stand-alone basis. In responding to this request, GFF 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) and (3) (2013). As a result, GFF conferred with Commission staff as to how GFF would close down its operations, including proceeding to transfer and/or liquidate its customer open positions and accounts. Commission staff advised GFF as to activities in which to engage and not engage in connection with closing down its operations; however, GFF did not initially follow Commission staff’s directions in their entirety.

GFF ceased operations on November 30, 2012, and completed the transfer and/or liquidation of all customer accounts by December 28, 2012.

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”)² and the Food, Conservation and Energy Act of 2008 (“CRA”)³ 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.

² 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).

³ 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).

GFF failed to maintain sufficient adjusted net capital, on a stand-alone basis, for various 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), and (3) (2013).

V.

FINDINGS OF VIOLATION

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

VI.

OFFER OF SETTLEMENT

GFF 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 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated

by the Commission in conformity therewith, Part 148 of the 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 upon which this Order is entered shall consist solely of the findings contained in this Order, to which GFF 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 GFF violated Regulation 5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i) and (3) (2013);
 2. orders GFF to cease and desist from violating Regulation 5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i) and (3) (2013);
 3. orders GFF to pay a civil monetary penalty in the amount \$200,000, plus post-judgment interest; and
 4. orders GFF 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 GFF's Offer.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. GFF⁴ shall cease and desist from violating Regulation 5.7(a)(1)(i) and (3), 17 C.F.R. § 5.7(a)(1)(i) and (3) (2013).
- B. GFF shall pay a civil monetary penalty in the amount of \$200,000 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

⁴ Subsequent to the relevant period, GFF was acquired by an unaffiliated entity (the "purchaser"). The purchaser and its affiliates, other than GFF, are not included in the application of the cease and desist order in this Order.

pursuant to 28 U.S.C. § 1961 (2012). GFF 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:

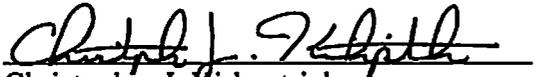
Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables—AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment is to be made by electronic funds transfer, GFF shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. GFF shall accompany payment of the CMP Obligation with a cover letter that identifies GFF and the name and docket number of this proceeding. GFF 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. GFF and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements:** GFF 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 GFF's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. GFF 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. **Partial Satisfaction:** GFF understands and agrees that any acceptance by the Commission of partial payment of GFF'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.
 3. **Change of Address/Phone:** Until such time as GFF satisfies in full its CMP Obligation as set forth in this Order, GFF 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.


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

Dated: May 19, 2014