

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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12:48 pm, Jan 13, 2016

In the Matter of:

**Otkritie Capital International,
Ltd.**

Respondent.

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) **CFTC Docket No. 16-06**
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**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTIONS 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 from in or about June 2010 to October 2013, (the “Relevant Period”), Otkritie Capital International, Ltd., formerly Otkritie Securities Limited, (“Respondent” or “OCI”) violated Commission Regulation (“Regulation”) 30.4, 17 C.F.R. §30.4 (2014). 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 violations 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 (“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, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.¹

¹ Respondent 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 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

III.

The Commission finds the following:

A. SUMMARY

In 1987, the Commission adopted Part 30 of the General Regulations Under the Commodity Exchange Act to govern the offer and sale to U.S. persons of futures and options contracts entered into on, or subject to the rules of, a foreign board of trade.² Part 30 was promulgated pursuant to Sections 2(a)(1)(A), 4(b), and 4(c) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 2(a)(1)(A), 6(b), and 6(c) (2012) which vest the Commission with exclusive jurisdiction over the offer and sale in the United States of options and futures contracts traded on or subject to the rules of a board of trade, exchange, or market located outside of the United States.

OCI violated Regulation 30.4 by permitting two of its U.S. customers to trade futures and options in foreign markets while not registered as a Futures Commission Merchant (“FCM”), or pursuant to a Regulation 30.10, 17 C.F.R. § 30.10 (2014) exemption.

* * *

In accepting OCI’s Offer, the Commission recognizes OCI’s significant cooperation during the investigation of this matter by the CFTC Division of Enforcement (“Division”), which included undertaking an internal investigation, self-reporting, taking corrective actions and increasing internal controls to help detect and prevent deficiencies going forward.³

B. RESPONDENT

OCI is a London-based firm offering corporate and institutional clients investment services. It operates mostly in Europe, and generally on behalf of European clients. OCI is not registered with the Commission in any capacity and does not have a registration exemption, pursuant to Regulation 30.10.

findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

² 52 Fed. Reg. 28980 (Aug. 5, 1987).

³ The Commission has long given credit for cooperative conduct by respondents and defendants when determining the appropriate level of sanctions to impose or approve in enforcement actions. See CFTC Policy Statement Relating to the Commission’s Authority to Impose Civil Money Penalties, [1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,265 (November 1, 1994); See also 2004 Enforcement Advisory on Cooperation, *Cooperation Factors in Enforcement Division Sanction Recommendations*, available at <http://www.cftc.gov/ucm/groups/public/@cpdisciplinaryhistory/documents/file/enfcooperation-advisory.pdf>

C. FACTS

In or around June, 2010, OCI opened accounts for U.S. affiliates of two institutional, global proprietary trading organizations. One of the OCI accounts was for a U.S. based trading company (“U.S. Entity A”), which is subsidiary of a global proprietary trading company headquartered in Amsterdam, the Netherlands. The second OCI account was also for a trading company (“U.S. Entity B”). U.S. Entity B is a United States-based affiliate of a global proprietary trading company with offices and affiliates in London, Hong Kong, and New York.

Upon account opening, both U.S. Entity A and U.S. Entity B were separately reviewed by the OCI Compliance Department and the Money Laundering Reporting Officer. Both the U.S. Entity A and U.S. Entity B accounts were opened in names that were very similar to their foreign parents. In fact, the only significant naming difference between the US entities and their foreign parents was that the U.S. entities included “U.S.” in their names. Both U.S. Entity A and U.S. Entity B were, during the Relevant Period, automated, algorithmic, traders.

For approximately three years, OCI facilitated U.S. Entity A’s and U.S. Entity B’s trading of broad-based foreign securities index futures on foreign markets, including markets awaiting approval for trading by the Commission.⁴ It appears that, because both U.S. Entity A and U.S. Entity B were automated, algorithmic traders, there was virtually no human interaction between the U.S. affiliates and OCI that would have prompted a deeper inquiry into potential Part 30 obligations. OCI failed to recognize the difference between the accounts held and trading conducted by U.S. Entity A and U.S. Entity B, and the accounts held and the trading conducted through OCI by their foreign parents.

From late 2011 to early 2012, OCI commenced preparations of its Part 30 exemption application and submitted it to the Financial Services Authority (“FSA”), requesting that the FSA provide a letter of good standing to support the Part 30 exemption application process. In February 2012, the FSA advised OCL that the FSA would not issue such letter because OCI was, at the time, subject to a review pursuant to Section 166 of the Financial Services and Markets Act of 2000 (“FSA Review”). The FSA Review followed a material fraud that had been perpetrated against OCI in 2011. Ultimately, the events surrounding the FSA Review brought the instant Part 30 problems involving U.S. Entity A and U.S. Entity B to the fore. In or about September 2013, OCI’s Compliance department became aware that the U.S. Entity A and U.S. Entity B accounts were held by United States-based customers and self-reported to the Financial Conduct Authority (formerly the FSA) and the Commission. In or about October 2013, OCL closed the U.S. Entity A and U.S. Entity B accounts.

⁴ For example, the Moscow Exchange, the Turkish Derivatives Exchange and the Warsaw Stock Exchange are all awaiting Commission approval as foreign exchanges.

IV.

LEGAL DISCUSSION

Regulation 30.4(a) provides, in relevant part, that “it shall be unlawful for any person, with respect to a foreign futures or foreign options customer: (a) to solicit or accept orders for or involving any foreign futures contract or foreign options transaction and, in connection therewith, to accept any money...unless such person shall have registered as an FCM. Further, certain foreign futures and options brokers are not required to register as an FCM if they meet the exemptions listed in Regulation 30.10(b)(1)-(6).

During the Relevant Period, OSI solicited and accepted orders, and accepted funds from U.S. Entity A and U.S. Entity B involving foreign futures contracts or foreign options transactions without being registered as an FCM. Moreover, OSI did not meet the exemptions set out in Regulation 30.10(b)(1)-(6).

Thus, OCI violated Regulation 30.4 by permitting two of its U.S. customers to trade futures and options in foreign markets while not registered as an FCM, or pursuant to a Regulation 30.10 exemption.

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Otkritie Capital International, Ltd. violated Regulation 30.4, 17 C.F.R. §30.4 (2014).

VI.

OFFER OF SETTLEMENT

Respondent 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 Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2014), 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 Respondent has consented in the Offer;
- 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 Respondent violated Regulation 30.4, 17 C.F.R. §30.4 (2014);
 2. Orders Respondent to cease and desist from violating Regulation 30.4, 17 C.F.R. §30.4 (2014);
 3. Orders Respondent to pay a civil monetary penalty in the amount of One hundred, forty thousand dollars (\$140,000); and
 4. Orders Respondent and their 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 the Offer.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Regulation 30.4, 17 C.F.R. §30.4 (2014);

- B. Respondent pay a civil monetary penalty in the amount of One hundred, forty thousand dollars (\$140,000), 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 (2012).

Respondent 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
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

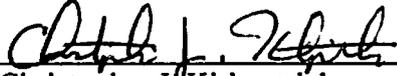
If payment is to be made by electronic funds transfer, Respondent shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent(s) shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent 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. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements:** Respondent agrees that neither it nor any of its successors or assigns, agents or employees under its 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 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.

2. **Partial Satisfaction:** Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent'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.

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

By the Commission.



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

Dated: January 13, 2016