

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:)

LMC ASSET MANAGEMENT, INC.,)

Respondent.)

) **CFTC Docket No. 12-263**
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**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 from at least October 18, 2010 to at least October 21, 2011 (the “Relevant Period”), LMC Asset Management, Inc. (“LMC” or “Respondent”) violated provisions of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 1 *et seq.* (2006 & Supp. IV 2011), as amended by 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), specifically Section 2(c)(2)(C)(iii)(I)(bb), 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb) (2006 & Supp. IV 2011), and Commission Regulation (“Regulation”) 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2012).

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, as Amended, 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

III.

The Commission finds the following:

A. SUMMARY

During the Relevant Period, LMC solicited or accepted orders from customers who were not eligible contract participants (“ECPs”), in retail, leveraged foreign currency (“forex”) transactions without being registered with the Commission or having a valid exemption from the requirement to register.

LMC violated Section 2(c)(2)(C)(iii)(I)(bb) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb) (2006 & Supp. IV 2011), as amended, and Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2012), by exercising discretionary trading authority or obtaining written authorization to exercise written trading authority over any account for or on behalf of any person that is not an ECP in connection with leveraged forex transactions while not being registered as a commodity trading advisor (“CTA”) with the Commission.

B. RESPONDENT

Respondent LMC Asset Management, Inc. is a Florida corporation formed on or about October 18, 2005, with its principal place of business at 1121 S. Military Trail, Suite 223, Deerfield Beach, Florida 33442. LMC has never been registered with the Commission in any capacity. LMC is not a financial institution, registered broker dealer, insurance company, futures commission merchant (“FCM”), financial holding company, or investment bank holding company, nor is it an associated person (“AP”) of such entities.

C. FACTS

During the Relevant Period, LMC, directly and indirectly solicited actual and prospective customers to open forex trading accounts at City Credit Capital (UK), Ltd. (“CCC”), an unregistered clearinghouse located in the United Kingdom, and exercised discretionary trading authority over such accounts. However, during the Relevant Period, LMC acted as a CTA without the benefit of registration with the Commission and without claiming a valid exemption from registration.

LMC solicited actual and prospective customers through, among other things, LMC’s United States telephone number, and via United States mail.

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

None of these actual and prospective customers were ECPs. Throughout the Relevant Period, an ECP was defined by the Act, in relevant part, as an individual with total assets in excess of (i) \$10 million, or (ii) \$5 million and who enters the transaction “to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.” See Section 1a(12)(xi) of the Act, 7 U.S.C. § 1a(12)(xi) (2006).

As a result of these solicitations, thirty-six (36) non-ECP customers opened trading accounts during the Relevant Period, with deposits totaling approximately Four Hundred Fifty-Five Thousand, One Hundred Fifty-Five Dollars and Twenty-Two Cents (\$455,155.22). Customers completed the account opening documents mailed to them by LMC, including a “Limited Power of Attorney Form,” which gave LMC discretionary trading authority over these customer accounts. The accounts were carried by CCC.

The “Fee Schedule” included in the account opening documents provided that, for each account opened at CCC, LMC would receive a two percent (2%) “management fee” per year and twenty percent (20%) “net high profits” per quarter. LMC also provided customers with instructions on how to wire funds to a bank account in the name of CCC in London, United Kingdom. Customers were not directly provided account statements by Respondent. Rather, some customers were given a login and password to access the Market Trader 2 System on CCC’s website, <http://marketstrader.cccapital.co.uk>, and others were advised of the progress of their account via telephone.

On October 21, 2011, CCC closed all accounts of United States customers and notified customers that their accounts were automatically settled.

IV.

LEGAL DISCUSSION

A. Respondent Violated Section 2(c)(2)(C)(iii)(I)(bb) of the Act and Regulation 5.3(a)(3)(i)

On October 18, 2010, the Commission enacted new regulations implementing certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), Pub. L. No. 111-203, Title VII, §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010) and the CRA, with respect to off-exchange retail forex transactions.

Section 2(c)(2)(C)(iii)(I)(bb) of the Act provides that:

A person, unless registered in such capacity as the Commission by rule, regulation, or order ... shall not—

(bb) exercise discretionary trading authority or obtain written authorization to exercise written trading authority over any account for or on behalf of any person that is not an eligible contract participant in connection with agreements, contracts, or

transactions described in clause (i) of this subsection entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee), or (ff) of subparagraph (B)(i)(II).²

Section 2(c)(2)(C)(iii)(I)(bb) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb) (2006 & Supp. IV 2011).

Regulation 5.1(e)(1), 17 C.F.R. § 5.1(e)(1) (2012), defines a “commodity trading advisor” for purposes of Part 5 of the Regulations, as “any person who exercises discretionary trading authority or obtains written authorization to exercise discretionary trading authority over any account for or on behalf of any person that is not an eligible contract participant as defined in section 1a(12) of the Act, in connection with retail forex transactions.” Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2012), mandates that any CTA, as defined in Regulation 5.1(e)(1), is required to register as a CTA.

LMC failed to register as a CTA after October 18, 2010, as required by the Commission’s Regulations. LMC acted as a CTA, as defined in Regulation 5.1(e)(1), 17 C.F.R. § 5.1(e)(1) (2012), because it exercised discretionary authority over accounts of individuals who were not ECPs, in connection with retail forex transactions.

During the Relevant Period, Respondent violated Section 2(c)(2)(C)(iii)(I)(bb) of the Act, and Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2012) by failing to register as a CTA

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, LMC Asset Management, Inc. violated Section 2(c)(2)(C)(iii)(I)(bb) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb) (2006 & Supp. IV 2011), and Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2012).

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;

² United States financial institutions, registered broker dealers, insurance companies, financial holding companies, and investment bank holding companies. 7 U.S.C. § 2(c)(2)(B)(i)(II).

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 Commission's 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 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 Section 2(c)(2)(C)(iii)(I)(bb) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb) (2006 & Supp. IV 2011), and Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2012);
2. orders Respondent to cease and desist from violating Section 2(c)(2)(C)(iii)(I)(bb) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb) (2006 & Supp. IV 2011), and Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2012);
3. orders Respondent to pay a civil monetary penalty ("CMP Obligation") in the amount of one hundred and forty thousand dollars (\$140,000), plus post-judgment interest;
4. orders that Respondent is prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a (2006 & Supp. III 2009)), until

after full payment and satisfaction of the CMP Obligation and any applicable interest, and all registered entities shall refuse it trading privileges; and

5. 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 Section 2(c)(2)(C)(iii)(I)(bb) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb) (2006 & Supp. IV 2011), and Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2012).
- B. Respondent shall pay a CMP Obligation in the amount of one hundred and forty thousand dollars (\$140,000) within thirty (30) days of the date of entry of this Order. If the CMP Obligation is not paid in full within thirty (30) 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). 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 --- 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, 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 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.

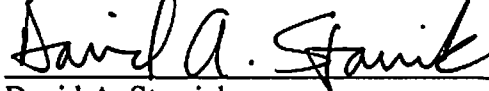
- C. Respondent is prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a (2006 & Supp. III 2009)), until after full payment and satisfaction of the CMP Obligation and any applicable interest, and all registered entities shall refuse it trading privileges.
- D. Respondent, and their 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 and 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. Respondent agrees that, until after full payment and satisfaction of the CMP Obligation and any applicable interest, it shall not, directly or indirectly:
 - a. enter into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2012)) ("commodity options"), security futures products, and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) ("forex contracts") for Respondent's own personal account or for any account in which Respondent has/have a direct or indirect interest;
 - b. have any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts traded on Respondent's behalf;
 - c. control or direct the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;
 - d. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products and/or forex contracts;
 - e. apply for registration or claim exemption from registration with the Commission in any capacity, and engage in any activity requiring such

registration or exemption from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012); and/or

- f. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a (2006 & Supp. III 2009)) registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012).
- E. **Partial Satisfaction:** Respondent understands and agrees that any acceptance by the Commission or the Monitor of 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.
- F. **Change of Address/Phone:** Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Consent Order, Respondent 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.



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

Dated: July 18, 2012