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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

_____	)	
	)	
UNITED STATES COMMODITY	)	<b>CIVIL ACTION NO:</b>
FUTURES TRADING COMMISSION,	)	
	)	<b>1:11-cv-06207</b>
Plaintiff,	)	<b>Honorable Ruben Castillo</b>
	)	
v.	)	
	)	
CITY CREDIT CAPITAL, (UK) Ltd.,	)	
	)	
Defendant.	)	
_____	)	

**PROPOSED CONSENT ORDER FOR PERMANENT INJUNCTION  
AND OTHER EQUITABLE RELIEF AND PENALTIES AGAINST  
DEFENDANT CITY CREDIT CAPITAL, (UK) LTD.,**

**I. BACKGROUND**

On September 7, 2011, Plaintiff Commodity Futures Trading Commission ("CFTC" or "Commission") filed a Complaint for Injunctive and Other Equitable Relief and Penalties Under the Commodity Exchange Act ("Complaint") against Defendant City Credit Capital, (UK) Ltd. ("Defendant" or "City Credit") seeking injunctive and other equitable relief and penalties for violations of the Commodity Exchange Act ("Act"), 7 U.S.C. § 1 *et seq.* (2006), 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), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010) ("Dodd-Frank Act"), (to be codified at 7 U.S.C. §§ 1 *et seq.*), and the Commission Regulations ("Regulations") promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.*(2011)

## II. CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint against City Credit without a trial on the merits or any further judicial proceedings, City Credit, by and through its attorney of record:

1. Consents to entry of this Consent Order for Permanent Injunction and Other Equitable Relief and Penalties Against Defendant City Credit (“Consent Order”);

2. Affirms that City Credit’s consent to entry of this Consent Order is voluntary and that no promise or threat has been made by the Commission or any member, officer, agent, or representative thereof to induce it to consent to entry of this Consent Order, other than as specifically contained herein;

3. Acknowledges service of the Complaint and summons;

4. Neither admits nor denies the allegations of the Complaint, except as to jurisdiction and venue, which it admits. However, City Credit agrees and intends that the allegations of the Complaint shall be taken as true and correct and be given preclusive effect, without further proof, in the course of (i) any current or subsequent bankruptcy proceeding filed by, or on behalf of, or against the Defendant; (ii) any proceeding to enforce this Consent Order, and (iii) any proceeding pursuant to Sections 8a(1)-(2) of the Act, to be codified at 7 U.S.C. §§ 12a(1)-(2), and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2011). The Defendant shall provide, after entry of this Consent Order, immediate notice of any change of address, telephone number, or contact information in the manner required by Part XI of the Consent Order;

5. Waives:

A. any and all claims that City Credit may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or

Part 148 of the Regulations, 17 C.F.R. §§ 148.1-30 (2010), relating to, or arising from, this action;

- B. any and all claims that City Credit may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, §§ 201-253, 110 Stat. 857, 857-868 (1996), as amended by Pub. L. 110-28, § 8302, 121 Stat. 204-205 (2007), relating to, or arising from, this action;
- C. any and all claims of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of this Consent Order or any order imposing restitution, a civil monetary penalty, or any other relief; and
- D. all rights of appeal from this Consent Order;

6. Neither admits nor denies the findings of fact and conclusions of law contained in Parts III and IV of this Consent Order;

7. Agrees that neither City Credit nor any of its agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the findings of fact or conclusions of law in this Consent Order, or creating or tending to create the impression that the Complaint or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect City Credit's: (a) testimonial obligations; (b) right to take positions in other proceedings to which the Commission is not a party; or (c) right to explain in filings made to non-U.S. regulatory authorities that this Consent Order and the Settlement it embodies are not based on an admission of violations. City Credit shall take all steps necessary to ensure that all of its agents and employees understand and comply with this agreement;

8. Agrees that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against City Credit in any other proceeding;

9. Agrees to provide notice to the Commission in the manner required by Part XI of this Consent Order of any bankruptcy proceeding filed by, on behalf of, or against City Credit, whether inside or outside the United States; and

10. Consents to the continued jurisdiction of this Court for the purposes of enforcing the terms and conditions of this Consent Order and for any other purposes relevant to this action, even if City Credit now or in the future resides outside this District.

### **III. FINDINGS OF FACT**

#### **A. Parties to this Consent Order**

11. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with administering and enforcing the Act, as amended, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Regulations, 17 C.F.R. §§ 1.1 *et seq.* (2010).

12. Defendant **City Credit Capital, (UK) Ltd.**, is a company located in London, UK that solicits and accepts orders for off-exchange foreign currency (“forex”) transactions. City Credit has never been registered with the Commission in any capacity.

#### **B. Jurisdiction and Venue**

13. The Commission has jurisdiction over the forex transactions at issue in this action pursuant to Section 2(c)(2) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2).

14. This Court has jurisdiction over City Credit and the subject matter of this action pursuant to Section 6c(a) of the Act, as amended, to be codified at 7 U.S.C. § 13a-1(a), which authorizes the Commission to seek injunctive relief in a U.S. district court against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder, and grants such court jurisdiction to entertain such action.

15. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, to be codified at 7 U.S.C. § 13a-1(e), because City Credit transacts business in this District and certain transactions, acts, practices, and courses of business alleged in the Complaint occurred, are occurring, or are about to occur within this District. Furthermore, an alien may be sued in any judicial district. 28 U.S.C. § 1391(d) (2006).

**C. The Commission Enacted New Regulations Effective October 18, 2010**

16. Effective October 18, 2010, the Commission enacted new regulations implementing certain provisions of the Act, as amended, with respect to off-exchange forex transactions.

**D. City Credit's Solicitations and Forex Transactions**

17. Beginning on October 18, 2010 to October 21, 2011 (the "relevant period"), City Credit accepted orders from any natural person residing in the United States ("U.S. customers") who were not eligible contract participants ("ECPs"), as defined in the Act, to open leveraged forex trading accounts through its website, <http://www.cccapital.co.uk>. This website is hosted by a server located in Hong Kong and the domain name is registered through a domain name registrar in Canada.

18. City Credit also accepted orders from U.S. customers who are not ECPs to open leveraged forex trading accounts through what it refers to as "Introducing Agents" who are independent agents, both foreign and from the United States, who receive a commission for introducing clients to City Credit.

19. As advertised on its website, City Credit offers individual customers the opportunity to trade forex.

20. Customers can open trading accounts by submitting information online through City Credit's website, by downloading the account opening documents from the website and

mailing the completed documents to City Credit, or by completing account opening documents supplied to them by an "Introducing Agent."

21. The City Credit Personal Account Application Form asks that the prospective client enter certain information, such as his or her name, address, including country of residence, telephone and email contact information.

22. Although City Credit inquires about an account holder's annual income, it fails to inquire about its prospective customers' net worth and thus cannot determine if they have total assets of \$5 million and if they are ECPs, as defined in the Act.

23. To complete the account opening procedure, the customer must fund his or her account by using one of various options and may do so with any major currency. However, City Credit specifies that the minimum deposit requirement is \$5,000 U.S. dollars.

24. During the relevant period, City Credit offered to act as a counterparty to and solicited and accepted orders from at least 112 United States retail forex customers.

25. Through its website during the relevant period, City Credit solicited, accepted and executed orders from U.S. customers who were not ECPs, as defined by the Act, in connection with leveraged retail forex transactions at City Credit and offered to act as a counterparty to U.S. customers.

26. City Credit fails to inquire whether a prospective customer has the ability or the business need to accept foreign currency into his bank account.

27. The retail forex transactions City Credit engaged in with non-ECP U.S. customers during the relevant period neither resulted in delivery within two days nor created an enforceable obligation to deliver between a seller and a buyer who had the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these retail forex

transactions remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

28. Thus, City Credit acted as a retail foreign exchange dealer ("RFED") and did so by acting as a counterparty for U.S. customers to trade forex at City Credit.

29. City Credit has not registered with the Commission as an RFED or in any other capacity.

30. City Credit is not exempt from registration.

#### **IV. CONCLUSIONS OF LAW**

##### **A. Summary**

31. On October 18, 2010, the Commission enacted new regulations implementing certain provisions of the Dodd-Frank Act, and the CRA, to be codified at 7 U.S.C. §§ 1 *et seq.*, with respect to forex transactions.

32. As detailed below, the new regulatory scheme required that a person offering to be, or acting as, the counterparty to certain retail forex transactions register with the Commission as an RFED.

33. As detailed below, the Court finds that City Credit solicited or accepted orders from certain United States customers or potential United States customers in connection with certain retail forex transactions and acted as the counterparty to retail forex transactions with certain persons, all without being properly registered with the Commission as is required by the Act, as amended, and the Regulations.

##### **B. City Credit Solicited or Accepted Orders From Non-Eligible Contract Participants**

34. At least during the relevant period, City Credit solicited or accepted orders from persons who were not ECPs, which are defined by Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1a, in relevant part as individuals with total assets in excess of (i) \$10

million; or (ii) \$5 million and who enter the transactions to manage the risk associated with assets owned or liabilities incurred, or reasonably likely to be owned or incurred, by the individuals.

**C. City Credit Offered or Entered into Forex Transactions Described in Section 2(c)(2)(C) of the Act, as amended**

35. At least during the relevant period, City Credit offered and entered into forex transactions described in Section 2(c)(2)(C) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C), which includes forex transactions offered to, or entered into with, a non-ECP on a “leveraged or margined basis” and was not a counterparty that is exempted from registration.

**D. City Credit Acted as a Retail Foreign Exchange Dealer**

36. At least during the relevant period, City Credit acted as an RFED, which is defined by Regulation 5.1(h)(1), 17 C.F.R. § 5.1(h)(1) (2011), as “any person that is, or that offers to be, the counterparty to a retail forex transaction with certain exceptions which do not apply to City Credit.

**E. City Credit Violated Section 2(c)(2)(C) of the Act**

37. City Credit violated Section 2(c)(2)(C) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C), by soliciting, offering to take, and taking orders from non-eligible contract participants (“non-ECPs”) in connection with forex transactions at an RFED without being properly registered.

**F. City Credit Violated Regulation 5.3(a)(6)(i)**

38. Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011), took effect on October 18, 2010 and requires RFEDs to be registered.

39. At least during the relevant period, City Credit acted as an RFED but failed to register with the Commission as an RFED.



**G. Permanent Injunctive and Other Equitable Relief and Penalties Under the Act Are Warranted**

40. City Credit has engaged, is engaging, or is about to engage in acts and practices that violate Section 2(c)(2)(C) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C), and Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011).

41. Unless restrained and enjoined by this Court, there is a reasonable likelihood that City Credit will continue to engage in the acts and practices alleged in the Complaint or in similar acts and practices that violate the Act and Regulations. Furthermore, the nature of City Credit's violations and the need to deter others from committing similar violations of the Act and Regulations warrants the imposition of a civil monetary penalty. The imposition of ancillary equitable relief is also necessary to carry out the objectives of the Act and Regulations.

**V. PERMANENT INJUNCTION**

**THE PARTIES AGREE AND IT IS HEREBY ORDERED THAT:**

42. City Credit, all persons insofar as they are acting in the capacity of City Credit's officers, agents, servants, employees, and attorneys, and all persons insofar as they are acting in active concert or participation with City Credit who receive actual notice of this Consent Order by personal service or otherwise, are permanently restrained, enjoined, and prohibited from directly or indirectly:

- A. Engaging in any conduct in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa), including, but not limited to, soliciting or accepting orders from any U.S. customer or potential United States customer who is a non-ECP in connection with forex transactions without registering with the Commission; and
- B. Engaging in any conduct in violation of Regulation 5.3(a)(6)(i), to be codified at 17 C.F.R. § 5.3(a)(6)(i), including, but not limited to, offering

to be the counterparty to U.S. customers' forex transactions without registering with the Commission.

**VI. CITY CREDIT WEBSITES**

**IT IS FURTHER ORDERED THAT:**

43. City Credit and all persons insofar as they are acting in the capacity of City Credit's officers, agents, servants, employees, and attorneys shall within three days of the date of entry of this Consent Order publish on all websites owned or otherwise maintained by City Credit, including, but not limited to, <http://www.cccapital.co.uk>, a prominently displayed notice stating, "Please be advised City Credit Capital (UK) does not accept US customers" ("Website Notification").

44. City Credit, all persons insofar as they are acting in the capacity of City Credit's officers, agents, servants, employees, and attorneys, and all persons insofar as they are acting in active concert or participation with City Credit who receive actual notice of this Consent Order by personal service or otherwise, are permanently restrained, enjoined, and prohibited from directly or indirectly contradicting, in any manner whatsoever, the Website Notification.

45. The provisions contained in Part VI of this Consent Order shall remain in effect unless and until City Credit properly registers with the Commission.

**VII. LIQUIDATION OF UNITED STATES CUSTOMER ACCOUNTS**

46. City Credit states that it has liquidated all of its U.S. customers' accounts and that no U.S. customers have any open positions in any accounts at City Credit.

**VIII. TRADING PROHIBITION**

47. City Credit, all persons and entities insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of City Credit, and all persons and entities insofar as they are acting in concert or participation with City Credit who receive

actual notice of this order by personal service or otherwise, shall be permanently prohibited, enjoined and restrained from directly or indirectly:

- A. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a on behalf of any U.S. customers;
- B. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2011) ("commodity options"), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) ("forex contracts"), for any U.S. customers;
- C. Controlling or directing the trading for or on behalf of any U.S. customer, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, and/or forex contracts;
- D. Soliciting, receiving, or accepting any funds from any U.S. customers for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;

48. The provisions contained in Part VIII of this Consent Order shall remain in effect unless and until City Credit properly registers with the Commission.

#### **IX. CERTIFICATION OF COMPLIANCE**

##### **IT IS FURTHER ORDERED THAT:**

49. Within twenty days of the date of entry of this Consent Order, City Credit shall deliver to the Commission in the manner required by Part XI of this Consent Order a written certification that it has complied with the requirements contained in Parts VI and VII of this Consent Order. Such certification shall further include:

- A. A list of all websites on which the Website Notification has been published;
- B. A copy of all websites showing the Website Notification;

- C. A list of all United States customers to whom the Customer Notification was delivered, including name, account number, date of delivery, and means of delivery;
- D. A list of all United States customer accounts, including name, account number, email address, phone number, and mailing address, in which City Credit liquidated open positions from the Customer Notification delivery date to and including the Liquidation Date, along with the net realized gain or loss on the liquidated positions, the final balance of each account, the total amount of funds returned, and the means by which funds were returned; and
- E. A list of all United States customers, including name, account number, email address, phone number, and mailing address, for which City Credit transferred funds to the Escrow Account, including a description of the attempt(s) made to return funds to each customer and the amount of funds transferred to the Escrow Account for each customer.

**X. CIVIL MONETARY PENALTY**

**IT IS FURTHER ORDERED THAT:**

50. Upon the date of entry of this Consent Order, City Credit is hereby liable for, and a judgment is entered against City Credit to pay, a civil monetary penalty in the amount of \$140,000 plus post-judgment interest (“CMP Obligation”).

51. Post-judgment interest shall accrue on the civil monetary penalty beginning ten days after the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

52. City Credit 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, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the following address:

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 by electronic funds transfer is chosen, City Credit shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those instructions. City Credit shall accompany payment of the CMP Obligation with a cover letter that identifies City Credit and the name and docket number of this proceeding. City Credit shall simultaneously transmit a copy of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, at the same address.

#### **XI. NOTICES**

##### **IT IS FURTHER ORDERED THAT:**

53. All notices required to be given by this Consent Order shall be filed electronically with the Court and/or sent via certified mail, return receipt requested, as follows:

##### **Notice to Plaintiff Commission:**

Director of the Division of Enforcement  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street NW  
Washington, D.C. 20581

and

Susan B. Padove  
Senior Trial Attorney  
Division of Enforcement  
Commodity Futures Trading Commission  
525 W. Monroe St.  
Suite 1100  
Chicago, IL 60661

Notice to Defendant City Credit:

City Credit Capital (UK), Ltd.  
c/o Thomas F. Burke, P.C.  
53 W. Jackson Blvd, Suite 1441  
Chicago, IL 60604

## **XII. CONTINUING JURISDICTION OF THIS COURT**

### **IT IS FURTHER ORDERED THAT:**

54. This Court shall retain jurisdiction over this action to implement and carry out the terms of this Consent Order, to ensure compliance with this Consent Order, and for any suitable application or motion for additional relief within the jurisdiction of this Court.

## **XIII MISCELLANEOUS PROVISIONS**

### **IT IS FURTHER ORDERED THAT:**

#### **A. Entire Agreement and Amendments**

56. This Consent Order incorporates all of the terms and conditions of the settlement between the Commission and City Credit. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless it is: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

#### **B. Invalidation**

57. If any provision of this Consent Order or the application of any provision to any person or circumstance is held to be invalid, the remainder of the Consent Order and the

application of the provision to any other person or circumstance shall not be affected by such holding.

**C. Waiver**

58. The failure of any party hereto at any time to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

**D. Counterparts and Execution**

59. This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered (by facsimile, email, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by facsimile or email shall be deemed for all purposes as constituting good and valid execution and delivered by such party of this Consent Order.

**E. Authorization**

60. Alfred Tang hereby warrants that he is the Chief Executive Officer of City Credit, that this Consent Order has been duly authorized by City Credit, and that he has been duly empowered to sign and submit this Consent Order on behalf of City Credit.

**IT IS SO ORDERED.**

Date: 3/7, 2011

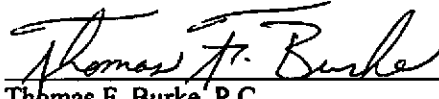


A handwritten signature in black ink, appearing to be 'Alfred Tang', written over a horizontal line.

Ruben Castillo  
United States District Judge

CONSENTED TO AND APPROVED BY:

Date: February 3, 2012



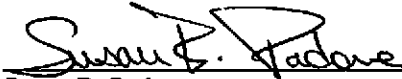
Thomas F. Burke, P.C.  
53 W. Jackson Blvd, Suite 1441  
Chicago, IL 60604  
Counsel for Defendant

Date: January 31, 2012



Alfred Tang, Chief Executive Officer, on behalf of  
Defendant

Date: March 5, 2012



Susan B. Padove  
Senior Trial Attorney  
Commodity Futures Trading Commission  
525 W. Monroe St.  
Suite 1100  
Chicago, IL 60661  
Counsel for Plaintiff