

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10723 / October 31, 2019

SECURITIES EXCHANGE ACT OF 1934
Release No. 87428 / October 31, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19592

In the Matter of

**XBT Corp Sarl d/b/a First
Global Credit**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933 AND SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against XBT Corp Sarl d/b/a First Global Credit (“FGC” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease and-Desist Proceedings Pursuant To Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

Summary

1. From 2014 through 2019, XBT Corp. SARL, d/b/a First Global Credit (“FGC” or “Respondent”) offered and sold security-based swaps online through its website Firstglobalcredit.com in violation of the registration and exchange trading provisions of the Securities Act and the Exchange Act. Through a variety of marketing methods, Respondent targeted U.S.-based retail investors to offer and sell security-based swaps. Although Respondent used different terminology to describe its investments—including bitcoin Asset Linked Notes (“bALNs”)—FGC’s investments always involved the exchange of the difference in value of an underlying asset from the time at which the accountholder established a position to the time the accountholder terminated the position. As a result, Respondent’s accountholders participated in price movements of an underlying asset without owning it. When the underlying asset is a security, this type of arrangement meets the definition of a “security-based swap.”

2. The swaps at issue tracked the real-time price of a variety of U.S.-listed securities. Investors funded their accounts using bitcoins, and purchased long or short positions in these investments. Respondent, either directly or through its wholly-owned subsidiary, was the counterparty for each transaction with its accountholders, and the Respondent received fees in connection with investor activity. Respondent was not registered with the Commission in any capacity while offering and selling these security-based swaps to U.S. investors.

3. Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”) established a comprehensive regulatory framework for swaps and security-based swaps. Generally, these products include any agreement, contract, or transaction whose value is based on the value of something else (*e.g.*, interest rates, currencies, commodities, or securities), or that provides for a payment that is dependent on the occurrence of an event associated with a potential financial, economic, or commercial consequence.

4. Among other reforms, Dodd-Frank sought to regulate the sale of security-based swaps to persons who are not “eligible contract participants.” The legislation modified Section 5 of the Securities Act to make it unlawful for any person to offer to sell, offer to buy, or purchase or sell a security-based swap to any person who is not an eligible contract participant without an effective registration. In addition, Dodd-Frank modified Section 6 of the Exchange Act to make it unlawful for any person to effect a transaction in a security-based swap with or for a person who is not an eligible contract participant, unless the transaction is effected on a national securities exchange.

5. These requirements were enacted in order to provide important investor protections, including ensuring such investors receive prescribed disclosure about security-based swaps and that trading of security-based swaps occurs on exchanges subject to the highest level of regulation, which in turn helps ensure that such security-based swaps are cleared on registered clearing agencies. For products such as these, exchange trading and central clearing benefit investors by providing public price discovery mechanisms, access to relevant trading information, appropriate monitoring of trading activity and regulated counterparty credit risk management.

6. Respondent violated Section 5(e) of the Securities Act, which prohibits offers and sales of unregistered security-based swaps when they are made to persons who are not eligible contract participants. Additionally, Respondent violated Section 6(l) of the Exchange Act, which requires that all transactions in security-based swaps involving persons who are not eligible contract participants be effected only on a registered national securities exchange. Finally, Respondent also violated Section 15(a) of the Exchange Act by acting as a dealer on every security-based swap transaction.

Respondent

7. **XBT Corp SARL d/b/a First Global Credit** is a limited liability company registered under Swiss law in the canton of Geneva, Switzerland. In 2014, the business operated as First Global Credit Nevis, a limited liability company organized under the laws of Nevis. In 2015, the business's operations were rolled into XBT Corp SARL d/b/a First Global Credit. During the relevant time period, Respondent offered and sold various investment products through its website firstglobalcredit.com. As detailed below, Respondent utilized the services of its wholly-owned Hong Kong subsidiary, XBT Corp (HK) Ltd, for certain transaction activity with its investors. Respondent has never registered with the Commission in any capacity and has no prior disciplinary history.

Facts

8. In 2014, Respondent FGC launched its website "firstglobalcredit.com." In October 2014, FGC announced that at an upcoming event in Las Vegas, Nevada it was launching "the world's first professional investment service that bridges the gap between cryptocurrencies and global stock markets." In that announcement, the Respondent's CEO explained that it "provide[s] a way for clients to invest in world-wide stock markets without the need to first exchange Bitcoins for Fiat currencies."

9. From that time through 2019, Respondent informed accountholders and the public through its website that FGC offered three different types of investor accounts that all provided the same substantive service: allowing investors to deposit bitcoins with FGC and then use the value of those bitcoins to buy and sell various investments.

10. The three types of trading accounts were: (1) "Competition accounts" for a limited number of traders who won FGC trading contests and were awarded a trading credit measured in bitcoin without the requirement to deposit bitcoin, but with an agreement to share any trading profits with the Respondent; (2) "Direct accounts" into which investors deposited bitcoins and then were able to make trades based on the value of their bitcoins on deposit; (3) "Self-Employed trading accounts" in which investors entered into an agreement with Respondent to deposit bitcoins and then work as an independent contractor trading with Respondent's money and sharing their trading profits with Respondent. For the Direct and Self-Employed accounts, Respondent claimed a security interest in the account holders' bitcoins on deposit.

11. To open an FGC trading account, an investor had to provide Respondent with "know your customer" ("KYC") information, including photo identification and proof of residency, such as a utility bill. As a result, Respondent knew the residency of all of its

investors. Respondent did not, however, inquire about account holders' assets or financial wherewithal as part of its KYC procedures. Importantly, according to the Firstglobalcredit.com Terms of Use, Respondent did not require investors to meet certain asset or income thresholds to transact on the platform.

12. Respondent offered a variety of investment choices, including securities and commodities, and the way FGC described those investments changed over time. Sometimes Respondent described the securities available as stocks, and other times as bALNs that tracked the price movements of U.S. and internationally listed stocks. Respondent's Terms of Use described bALNs as "derivative products" that are based on "underlying products to the bALNs including stocks, bonds... and options." The Terms of Use stated:

A bALN is to secure a profit or avoid a loss by reference to fluctuations in the price of the Underlying Product (e.g. shares, foreign currencies, etc.), rather than by taking delivery of any Underlying Product. With respect to bALNs in shares. [sic] No bALN transaction shall confer on you any right. [sic] Voting right, title or interest in any Underlying Product or entitle or oblige you to acquire, receive, hold, vote. [sic] Deliver, dispose of or participate directly in any corporate action of any Underlying Product. bALN products, unless agreed in writing by FGC will be denominated in bitcoin and will be classed as a bitcoin commodity product. Upon closure of the note, the client and FGC are obligated to deliver sufficient bitcoins to settle the transaction. In the event of a profitable trade settlement for the customer than FGC will deliver sufficient bitcoins to the customer's account to settle the bALN transaction. In the event of a losing trade settlement for the customer than sufficient bitcoins will be delivered from the customer's account to FGC to settle the bALN transaction. ...

Opening and Closing Transactions. A transaction with FGC will not expire but rather shall remain open until Client enters and offsetting (closing) transaction or until FGC exercises any of our rights to close out a transaction with you (e.g. because of a margin deficiency, because the underlying shares in a bALN short have become unborrowable, etc.)

13. When investors bought and sold these securities—typically described on Firstglobalcredit.com using the ticker symbol of the underlying U.S.-listed stock—Respondent, either directly or through its wholly-owned subsidiary, XBT Corp (HK) Ltd., served as the counterparty.

14. FGC used stock exchange terminology and provided broker-dealer functionality for opening and closing investment positions. For example, Firstglobalcredit.com provided an Order Entry interface that presented accountholders with an interface very similar to those used by online stock brokerage services. To buy or sell security-based swaps from FGC, accountholders first logged in to their FGC account. To invest, accountholders selected: (1) whether they wanted to buy or sell; (2) the name of the stock; (3) the number of shares, which matched the number of shares in the underlying stock; and (4) whether they are placing an order to transact at the market price or at a limit price they designated. FGC told its investors that the prices quoted for bALNs were based on pricing provided by exchanges for the stocks associated

with the bALNs. An investor who bought a bALN based on a stock profited if the price of the underlying stock increased, while an investor who sold a bALN profited if the price of the corresponding stock decreased.

15. Until the website was upgraded in 2016, FGC also offered a more streamlined “Quick Trade” interface through which accountholders could select Indices, Stocks, or ETFs, and then within each category select particular investments to monitor and trade. After selecting a security to monitor, the accountholder could click that security to bring up a Quick Trade interface that permitted streamlined orders.

16. Both the Order Entry and the Quick Trade interfaces and the upgraded website used exchange terminology and broker-dealer functionality for opening and closing investment positions. FGC offered accountholders the opportunity to buy and sell bALNs tracking more than 100 different U.S. listed stocks. FGC also informed accountholders that “[o]nce an order or instruction has been given to the company, it cannot be cancelled or modified without FGC’s consent. You acknowledge that it may not be possible to cancel/modify an order and that you are responsible for executions notwithstanding a cancel/modify request.”

17. Respondent promoted its platform at other events in the U.S., including events in New York City to celebrate the winners of Respondent’s trading competitions. Respondent’s executives also gave interviews and participated in podcasts at websites that are most visited by U.S. residents. At times, Firstglobalcredit.com posted disclaimers indicating that U.S. investors generally, or U.S. investors from certain states or cities, were restricted from having accounts or making trades. However, these disclaimers were not enforced dating back to Respondent’s inception. Some of the earliest trades on Respondent’s platform came from U.S. investors, and ultimately more than 25% of its traders were based in the U.S. On a value basis, U.S. residents accounted for more than 50% of all Self-Employed account trades, and more than 16% of all Direct account trades.

18. FGC had at least 90 investors who conducted trades in security-based swaps and/or commodities through the three types of accounts detailed above. Of those, 24 were U.S. residents. From October 2014 through September 2019, the 90-plus traders bought and sold more than 18,000 security-based swaps. During that period, Self-Employed traders and Competition winners collectively bought and sold \$62.5 million worth of security-based swaps based on U.S.-listed securities, with \$34 million of trades made by U.S. resident traders. Direct account traders bought and sold \$59 million worth of security-based swaps based on U.S. listed securities, with \$9.8 million of trades made by U.S. resident traders.

19. Additionally, the U.S. residents who purchased the security-based swaps at issue did not qualify as eligible contract participants with \$5 million or \$10 million invested on a discretionary basis.

20. Respondent charged Direct account traders a 0.1% commission on the value of all purchases and sales “(\$1/\$1000 worth of stock).” Respondent also charged Direct account traders a finance charge of 0.023% daily for positions held overnight. For traders who invested through Competition accounts and the Self-Employed program, Respondent did not charge commissions and overnight position fees, but instead charged traders a percentage of all trading

gains. Self-Employed traders were also charged an admissions fee. FGC earned a total of \$31,687 in commissions, overnight holding fees, and its share of trading profits from its U.S. resident investors.

Remedial Efforts

21. In determining to accept the Offer, the Commission considered cooperation afforded the Commission staff by Respondent and remedial acts promptly undertaken by Respondent, including the repayment of trading losses to U.S.-based investors.

Violations

22. A “security-based swap” is defined in Section 3(a)(68) of the Exchange Act to include any agreement, contract or transaction that is a “swap” as defined in Commodity Exchange Act Section 1a¹ and is based on either (1) an index that is a narrow-based security index, including any interest therein or on any value thereof, (2) a single security or loan, including any interest therein or on the value thereof, or (3) the occurrence, nonoccurrence, or extent of an occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer. *See* 15 U.S.C. § 78c(a)(68).

23. The regulatory regime established by Dodd-Frank contains a number of provisions applicable to transactions in security-based swaps that involve persons who are not eligible contract participants. The full definition of “eligible contract participant” includes several categories of persons and, in certain cases, monetary thresholds that vary depending on the particular type of person or entity involved. For example, individuals need at least \$5 million and often \$10 million invested on a discretionary basis to qualify as eligible contract participants. *See* 7 U.S.C. § 1a(18) (definition).

24. Section 5(e) of the Securities Act makes it unlawful for any person to offer to sell, offer to buy, or purchase or sell a security-based swap to any person who is not an eligible contract participant without an effective registration statement. *See* 15 U.S.C. § 77e(e).

25. Section 6(l) of the Exchange Act makes it unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract

¹ “[T]he term ‘swap’ [includes] any agreement, contract, or transaction— . . .

(ii) that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence; [or] (iii) that provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value of 1 or more . . . securities . . . and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset. . . .”

7 U.S.C. § 1a(47) (Commodity Exchange Act (“CEA”) section incorporated into the securities laws).

participant, unless such transaction is effected on a national securities exchange. *See* 15 U.S.C. § 78f(1).

26. As a result of the conduct described above, Respondent violated Section 5(e) of the Securities Act and Section 6(1) of the Exchange Act because the transactions were not executed with eligible contract participants, no registration statements were in effect, and the contracts were not effected on a national securities exchange.

27. As a result of the conduct described above, Respondent violated Section 15(a) of the Exchange Act by acting as an unregistered dealer on every security-based swap transaction.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Exchange Act, Respondent shall cease and desist from committing or causing any violations and any future violations of Section 5(e) of the Securities Act and Sections 6(1) and 15(a) of the Exchange Act.

B. FGC shall pay disgorgement of \$31,687, prejudgment interest of \$265, and civil penalties of \$100,000, for a total payment of \$131,952, to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act 21F(g)(3). Payment shall be made in the following installments: (1) \$32,988 within 14 days of the entry of this Order; (2) \$32,988 within 180 days of the entry of this Order; (3) \$32,988 within 270 days of the entry of this Order; and (4) \$32,988 within 360 days of the entry of this Order.

Payment shall be applied first to post order interest, which accrues pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying FGC as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to: Eric Werner, Associate Regional Director, Securities and Exchange Commission, 801 Cherry Street, Fort Worth, TX 76102.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, Respondent shall not argue that Respondent is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary