

UNITED STATES OF AMERICA

Before the

COMMODITY FUTURES TRADING COMMISSION

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| In the Matter of:           | ) |                       |
|                             | ) |                       |
| SMBC Capital Markets, Inc., | ) |                       |
|                             | ) | CFTC Docket No. 25-03 |
| Respondent.                 | ) |                       |
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ORDER INSTITUTING PROCEEDINGS PURSUANT TO

SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING

FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from at least May 2019 to August 2023 (“Relevant Period”), SMBC Capital Markets, Inc. (“Respondent”) violated, as set forth below, Sections 4s(f)(1)(B), 4s(g)(1), and 4s(h)(1)(B) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6s(f)(1)(B), 6s(g)(1), 6s(h)(1)(B), and Commission Regulations (“Regulations”) 23.201(a)(1), 23.202(a)(1) and (b)(1), and 23.602(a), 17 C.F.R. §§ 23.201(a)(1), 23.202(a)(1), (b)(1), 23.602(a) (2024). 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.

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 here, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.<sup>1</sup>

<sup>1</sup> Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant and agrees that they shall be taken as true and correct and given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

## II. FINDINGS

The Commission finds the following:

### A. Summary

During the Relevant Period, Respondent's employees communicated using unapproved methods. These written communications were sent and received by Respondent's employees and included messages related to Respondent's business as a Commission registrant that were required to be maintained under Commission-mandated recordkeeping requirements. These written communications were not captured and preserved by Respondent. As a result, Respondent violated Sections 4s(f)(1)(B) and 4s(g)(1) of the Act, 7 U.S.C. §§ 6s(f)(1)(B), 6s(g)(1), and Regulations 23.201(a)(1) and 23.202(a)(1) and (b)(1), 17 C.F.R. §§ 23.201(a)(1), 23.202(a)(1), (b)(1) (2024). In addition, the use of unauthorized communication methods violated Respondent's policies and procedures, which prohibited such communications. Respondent did not implement a diligent supervisory system to ensure compliance with Commission recordkeeping requirements and Respondent's own policies and procedures, and therefore Respondent failed to diligently supervise matters related to Respondent's business as a Commission registrant in violation of Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B), and Regulation 23.602(a), 17 C.F.R. § 23.602(a) (2024).

In accepting Respondent's Offer, the Commission recognizes Respondent's exemplary cooperation. The Commission's recognition is reflected in a reduced penalty, with Respondent receiving the maximum cooperation mitigation credit toward the full monetary penalty appropriate for these violations.

### B. Respondent

**SMBC Capital Markets, Inc.** is a financial services company with its headquarters in New York, New York. Respondent has been registered with the Commission as a swap dealer since December 31, 2012.

### C. Facts

Although Respondent's policies and procedures prohibited the use of unapproved communication methods, during the Relevant Period, Respondent's employees engaged in written communications related to Respondent's Commission-regulated business that were not monitored, captured, or preserved. Further, although no customer or market harm is known to have occurred as a result, Commission recordkeeping requirements were not met, and Respondent failed to diligently supervise its employees to ensure compliance.

#### 1. **Respondent's Recordkeeping Failures**

During the Relevant Period, Respondent's policies and procedures prohibited employees from using unapproved communication methods, such as personal text messages and WhatsApp, to engage in business-related communications. Additionally, Respondent provided training to its employees and issued policy reminders regarding Respondent's communications policies.

Messages sent through Respondent's approved communications methods were monitored, subject to review, and when appropriate, archived. However, messages sent using unapproved communication methods, including over personal WhatsApp, email, and text messages, were not monitored, subject to review, or archived.

In connection with the Division of Enforcement's ("Division's") investigation, Respondent conducted a review of its employees' use of unapproved communications. This review resulted in a determination that Respondent's employees had used unapproved communication methods to engage in firm business. A sampling analysis conducted by Respondent, which included the personal devices of approximately ten percent of its associated persons ("APs") over at least a one-year period, revealed that approximately seventy percent of the sampled APs violated Respondent's communications policies and procedures by using personal text messages or other unapproved methods to communicate with brokers, coworkers, and/or market participants. The analysis further revealed that the communications of some of these sampled APs involved Respondent's Commission-regulated business. Respondent acknowledges that these results are likely representative of the issue more broadly.

## **2. Exemplary Cooperation**

Respondent cooperated with the Division throughout its investigation. Respondent voluntarily collected and reviewed messages retrieved from the personal devices of a sampling of Respondent's APs and made presentations to Division staff regarding, among other things, Respondent's Commission-regulated business and its electronic communications compliance program.

As part of its cooperation efforts, Respondent has completed remediation. Respondent represents that it has enhanced its policies and procedures, provided new training concerning the use of unapproved communication methods, approved new communication platforms to address employee needs while ensuring compliance, implemented technological improvements, and enhanced its disciplinary framework to mitigate the risk of employees communicating by unapproved methods. Respondent further represents it disciplined staff that it found to have violated its policies regarding unapproved communication methods.

## **III. LEGAL DISCUSSION**

### **A. Respondent Failed to Keep Required Records in Violation of Sections 4s(f)(1)(B) and 4s(g)(1) of the Act and Regulations 23.201(a) and 23.202(a)(1) and (b)(1).**

Section 4s(f)(1)(B) of the Act obligates a swap dealer to keep "books and records of all activities related to its business as a swap dealer . . . in such form and manner and for such period as may be prescribed by the Commission by rule or regulation." 7 U.S.C. § 6s(f)(1)(B); *see also* Section 4s(g)(1) of the Act, 7 U.S.C. § 6s(g)(1) (requiring swap dealers to maintain daily trading records). Part 23 of the Regulations implement these recordkeeping requirements. 17 C.F.R. pt. 23 (2024).

Pursuant to Regulation 23.201(a)(1), a swap dealer is required to "keep full, complete, and systematic records, together with all pertinent data and memoranda, of all its swaps activities," including "[r]ecords of each transaction, including all documents on which

transaction information is originally recorded.” 17 C.F.R. § 23.201(a)(1) (2024). Further, Regulation 23.202(a)(1) and (b)(1) requires, among other things, that a swap dealer keep daily trading records of all swaps and related cash and forward transactions it executes, including, specifically, a record of all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that led to the execution of a swap transaction or the conclusion of a related cash or forward transactions. 17 C.F.R. § 23.202(a)(1), (b)(1).

During the Relevant Period, as a result of its employees’ use of unapproved communication methods, Respondent violated Sections 4s(f)(1)(B) and 4s(g)(1) of the Act and Regulations 23.201(a) and 23.202(a)(1) and (b)(1).

**B. Respondent Failed to Diligently Supervise in Violation of Section 4s(h)(1)(B) of the Act and Regulation 23.602(a).**

Section 4s(h)(1)(B) requires “diligent supervision of the business of the registered swap dealer[.]” 7 U.S.C. § 6s(h)(1)(B). Implementing this requirement, Regulation 23.602(a) requires that each swap dealer “shall establish and maintain a system to supervise, and shall diligently supervise, all activities relating to its business performed by its partners, members, officers, employees, and agents (or persons occupying a similar status or performing a similar function).” 17 C.F.R. § 23.602(a) (2024). The operative language of Regulation 23.602 is similar to the language of the Commission’s longstanding supervision regulation for futures and options, Regulation 166.3, 17 C.F.R. § 166.3 (2024).

Under Regulation 23.602(a), a violation is demonstrated by showing either that: (1) the registrant’s supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *See In re JPMorgan Chase Bank, N.A.*, CFTC No. 22-07, 2021 WL 6098347, at \*6 (Dec. 17, 2021) (consent order); *see also In re Commerzbank AG*, CFTC No. 19-03, 2018 WL 5921385, at \*10-11 (Nov. 8, 2018) (consent order) (noting textual similarities between Regulation 23.602 and Regulation 166.3, applying case law concerning Regulation 166.3). Either showing “alone is sufficient to establish a violation of the supervision requirement.” *Id.*, at \*10 (interpreting Regulation 23.602 in light of Regulation 166.3 precedents). No evidence of an underlying violation is necessary. *In re Collins*, CFTC No. 94-13, 1997 WL 761927, at \*10 (Dec. 10, 1997) (consent order) (interpreting Regulation 166.3). Evidence of violations that “‘should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly,’ is probative of a failure to supervise.” *See In re Bank of Nova Scotia*, CFTC No. 20-26, 2020 WL 4926053, at \*10 (Aug. 19, 2020) (consent order) (quoting *In re Société Générale Int’l Ltd.*, CFTC No. 19-38, 2009 WL 4915485, at \*7 (Sept. 30, 2019) (consent order)).

Respondent failed to supervise its swap dealer business activities diligently during the Relevant Period. Respondent failed to maintain an adequate supervisory system to ensure that its employees complied with Commission recordkeeping requirements and Respondent’s policies and procedures that prohibited business-related communications on unapproved communication methods. Respondent’s failure to diligently supervise is demonstrated by its failure to keep Commission-required records and to detect violations of its policies and procedures.

Accordingly, Respondent failed to supervise diligently its officers, employees, and agents, in violation of Section 4s(h)(1)(B) of the Act and Regulation 23.602(a).

#### **IV. FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Sections 4s(f)(1)(B), 4s(g)(1), and 4s(h)(1)(B) of the Act, 7 U.S.C. §§ 6s(f)(1)(B), 6s(g)(1), 6s(h)(1)(B), and Regulations 23.201(a)(1), 23.202(a)(1) and (b)(1), and 23.602(a), 17 C.F.R. §§ 23.201(a)(1), 23.202(a)(1), (b)(1), 23.602(a) (2024).

#### **V. OFFER OF SETTLEMENT**

Respondent has submitted the Offer in which it:

- A. Consents to the resolution of this matter in an administrative proceeding.
- B. Acknowledges service of this Order;
- C. 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;
- D. Waives:
  - 1. The filing and service of a complaint and notice of hearing;
  - 2. A hearing;
  - 3. All post-hearing procedures;
  - 4. Any and all rights or defenses that Respondent has or might have for the matter to be adjudicated in a federal district court in the first instance, including any associated right to a jury trial;
  - 5. Judicial review by any court;
  - 6. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
  - 7. Any and all claims that Respondent may possess under the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2024), relating to, or arising from, this proceeding;
  - 8. Any and all claims that Respondent may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201-253, 110 Stat. 847, 857-74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and

9. 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, including this Order;
- E. Agrees that Respondent is not the prevailing party in this action for purposes of the waiver of any and all rights under the Equal Access to Justice Act specified in Paragraph D.7 above.
- F. 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;
- G. 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 Sections 4s(f)(1)(B), 4s(g)(1), and 4s(h)(1)(B) of the Act, 7 U.S.C. §§ 6s(f)(1)(B), 6s(g)(1), 6s(h)(1)(B), and Regulations 23.201(a)(1), 23.202(a)(1) and (b)(1), and 23.602(a), 17 C.F.R. §§ 23.201(a)(1), 23.202(a)(1), (b)(1), 23.602(a) (2024);
  2. Orders Respondent to cease and desist from violating Sections 4s(f)(1)(B), 4s(g)(1), and 4s(h)(1)(B) of the Act, and Regulations 23.201(a)(1), 23.202(a)(1) and (b)(1), and 23.602(a);
  3. Orders Respondent to pay a civil monetary penalty in the amount of five hundred thousand dollars (\$500,000), plus post-judgment interest within fourteen (14) calendar days of the date of entry of this Order; and
  4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.
- H. Represents that Respondent enhanced its policies and procedures, provided new training concerning the use of unapproved communication methods, approved new communication platforms to address employee needs while ensuring compliance, implemented technological improvements, enhanced its disciplinary framework to mitigate the risk of employees communicating by unapproved methods, and has disciplined staff it found to have violated its policies regarding unapproved communication methods.

Upon consideration, the Commission has determined to accept the Offer.

## **VI. ORDER**

### **Accordingly, IT IS HEREBY ORDERED THAT:**

- A. Respondent and its successors and assigns shall cease and desist from violating Sections 4s(f)(1)(B), 4s(g)(1), and 4s(h)(1)(B) of the Act, 7 U.S.C. §§ 6s(f)(1)(B), 6s(g)(1), 6s(h)(1)(B), and Regulations 23.201(a)(1), 23.202(a)(1) and (b)(1), and 23.602(a), 17 C.F.R. §§ 23.201(a)(1), 23.202(a)(1), (b)(1), 23.602(a) (2024).

- B. Respondent shall pay a civil monetary penalty in the amount of five hundred thousand dollars (\$500,000) ("CMP Obligation"), within fourteen (14) calendar days of the date of the entry of this Order. If the CMP Obligation is not paid in full within fourteen (14) calendar 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.

Respondent shall pay the CMP Obligation and any post-judgment interest 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:

MMAC/ESC/AMK326  
Commodity Futures Trading Commission  
6500 S. MacArthur Blvd.  
HQ Room 266  
Oklahoma City, OK 73169  
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact the Federal Aviation Administration at the above email 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 Respondent and the name and docket number of this proceeding. 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, or such other address or recipient as instructed in writing by the Commission.

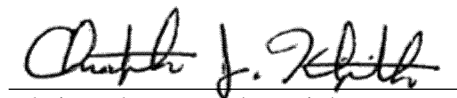
- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or 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: (1) testimonial obligations; or (2) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall comply with this agreement and 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 the 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 Respondent satisfies in full the CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone numbers and mailing addresses within ten (10) calendar days of the change.
4. Notices to Creditors: Until such time as Respondent satisfies in full the CMP Obligation, upon the commencement by or against Respondent of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of Respondent's debts, all notices to creditors required to be furnished to the Commission under Title 11 of the United States Code or other applicable law with respect to such insolvency, receivership, bankruptcy, or other proceedings, shall be sent to the address below, or such other address or recipient as instructed in writing by the Commission:

Secretary of the Commission  
Office of the General Counsel  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street N.W.  
Washington, DC 20581

**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: September 4, 2025