

**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**

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Office of Proceedings  
Proceedings Clerk

**3:40 pm, Sep 13, 2019**

**In the Matter of:**

**Tullett Prebon Americas Corp.,**

**Respondent.**

**CFTC Docket No. 19-24**

**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 on or about June 7, 2017, (the “Relevant Period”) Tullett Prebon Americas Corp. (“Respondent” or “Tullett”), violated Section 6(c)(2) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 9(2) (2012), because it is deemed liable for the acts of its employee pursuant to Section 2(a)(1)(B), 7 U.S.C. § 2(a)(1)(B) (2012), and Commission Regulation (“Regulation”) 1.2, 17 C.F.R. § 1.2 (2018). 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 as set forth herein and to determine whether any order shall 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 herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and 6(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 be 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

Prior to and during the Relevant Period, the Commission was investigating allegations that certain Tullett brokers on Tullett's U.S. Dollar Medium-Term Interest Rate Swaps Desk (the "Desk") made false or misleading statements to Tullett customers relating to, among other things, certain executed trades and bids and offers (the "investigation").<sup>2</sup>

During the course of the investigation, at least one Tullett broker ("Broker A") made false or misleading statements of material facts, or omitted to state material facts, to Commission staff during the Relevant Period concerning the subject of the investigation. Such statements violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012). These statements were made within the scope of the broker's employment or office at Tullett, and therefore that violation is deemed to be the act, omission, or failure of Tullett.

### B. RESPONDENT

**Tullett Prebon Americas Corp.** is a domestic brokerage service firm providing intermediary services to institutional customers in a variety of different products, including interest rate derivatives, foreign exchange, and energy products. Its headquarters is located at 200 Vesey Street, New York, New York, 10285.

Tullett has been registered as an Introducing Broker since September 30, 2013.

### C. FACTS

During the investigation, Tullett informed Broker A that Broker A was to appear for an interview by Commission staff. Broker A was told by supervisors at Tullett that the same firm and attorneys (the "Firm") that had represented Tullett and all other current Tullett employees would represent Broker A for the interview. Both Broker A and another employee stated that they believed that they did not have any input into the choice of counsel. Broker A did not understand prior to attending the interview that the interview was a voluntary one.

On the day before Broker A's interview, a co-manager of the Desk ("Co-Head A") who had previously given testimony during the investigation had observed that Broker A was being prepared for the interview by the Firm. Co-Head A subsequently took Broker A aside for a one-on-one meeting in a private office. At this meeting, Co-Head A told Broker A, in substance and in part, to "just answer the questions and not to go on and on about it." Broker A interpreted this instruction to mean that the answers at the interview should "toe a line that protected Tullett," and should not say anything that the Firm lawyers had not prepared Broker A to say.

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<sup>2</sup> The facts revealed during that investigation are being resolved by a separate order of the Commission.

At the interview, Broker A made false or misleading statements, or omitted material information that would have made the statements not false or misleading. Broker A had knowledge of and observations regarding the practices at the heart of the investigation, yet made false or misleading statements, or omitted material information, regarding the investigation and the practices being examined.

### III. LEGAL DISCUSSION

Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012), makes it “unlawful for any person to make any false or misleading statement of a material fact to the Commission . . . or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading.”

During an interview with Commission staff on or about June 7, 2017, Broker A made false or misleading statements, or omitted material information that would have made the statements not false or misleading, in violation Section 6(c)(2) of the Act.

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2018), provide, in relevant part, that the act, omission, or failure of any agent for a corporation within the scope of his or her employment shall be deemed the act, omission, or failure of such corporation, as well as of such agent. Under these sections of the Act and Regulations, strict liability is imposed upon principals for the actions of their agents acting within the scope of their employment. *See Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986) (principals are strictly liable for the acts of their agents); *see also Dohmen-Ramirez v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988) (same); *CFTC v. Byrnes*, 58 F. Supp.3d 319, 324 (S.D.N.Y. 2014) (same). An agent may act within the scope of his or her employment when making statements during the course of an investigation regarding his or her employer or co-workers. *Cf. Brumfield v. Sanders*, 232 F.3d 376,380-81 (3d Cir. 2000) (holding that an employee who made false statements about a co-worker during an investigation was acting within the scope of employment). Here, given the relevant facts surrounding the making of the statements during the interview, Broker A’s statements and omissions were committed within the scope of his or her employment with Tullett. *See, e.g., CFTC v. Int’l Fin. Services (New York) Inc.*, 323 F. Supp.2d 482, 499 n.12 (S.D.N.Y. 2004) (analyzing scope of employment based on the totality of the circumstances). Thus, Tullett is liable for these statements and omissions constituting violations of Section 6(c)(2) of the Act as principal pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2.

### IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that during the Relevant Period, Tullett violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012).

## V. OFFER OF SETTLEMENT

Respondent has submitted an Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges 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. pt. 148 (2018), 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, 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
  - 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, including this Order.
- 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 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012), because the acts of its employee are deemed to be the acts of Respondent pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2018);
  2. orders Respondent to pay a civil monetary penalty in the amount of two million dollars (\$2,000,000) plus post-judgment interest; and
  3. orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth below in Section VI of this Order.

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

## VI. ORDER

### Accordingly, IT IS HEREBY ORDERED THAT:

- A. Civil Monetary Penalty: Respondent shall pay a civil monetary penalty in the amount of two million dollars (\$2,000,000) (the "CMP Obligation"), within ten days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten 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 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:

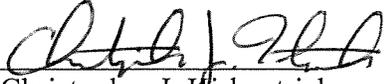
MMAC/ESC/AMK326  
Commodity Futures Trading Commission  
Division of Enforcement  
6500 S. MacArthur Blvd.  
HQ Room 181  
Oklahoma City, OK 73169  
(405) 954-6569 office  
(405) 954-1620 fax  
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne 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.

- B. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in its 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 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. **Cooperation, in General:** Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, this action.
  3. **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.
  4. **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 calendar days of the change.

**The provisions of this Order shall be effective on this date.**

By the Commission

A handwritten signature in black ink, appearing to read "Christopher J. Kirkpatrick". The signature is written in a cursive style with a large initial "C" and "K".

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

Dated: September 13, 2019