

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:)
)
)

NatWest Markets Plc, formerly)
The Royal Bank of Scotland plc,)

Respondent.)
)
)

CFTC Docket No. 19-40

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Office of Proceedings
Proceedings Clerk

7:22 pm, Sep 30, 2019

**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 in or about July 2012 to at least June 2017 (“Relevant Period”), **NatWest Markets Plc, formerly The Royal Bank of Scotland plc** (“Respondent” or “NatWest”) violated Section 4s(f) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6s(f) (2012), and Regulations 20.4 and 20.7, 17 C.F.R. §§ 20.4, 20.7 (2019), of the Commission Regulations (“Regulations”) promulgated thereunder. 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 herein, 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.¹

¹ 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

As a provisionally registered swap dealer, NatWest is required to make reports as are required by the Commission by rule or regulation relating to its swap transactions. CEA § 4s(f)(1)(A), 7 U.S.C. § 6s(f)(1)(A) (2012). Swap dealers such as NatWest that meet certain criteria are required to file daily large trader reports (“LTRs”) for reportable positions in physical commodity swaps. Regulation 20.4, 17 C.F.R. § 20.4 (2019). The data about physical commodity swaps reported in the LTRs must be the specific data the Commission has directed be submitted. *Id.* Swap dealers such as NatWest must also submit LTRs in the form and manner directed by the Commission as set forth in Regulation 20.7, 17 C.F.R. § 20.7 (2019).

During the Relevant Period, NatWest failed to fully comply with its LTR reporting obligations as a swap dealer under the Act and Regulations. In total, over the course of the Relevant Period, NatWest submitted LTRs that contained millions of errors in required data fields in dozens of categories, including errors where data were missing and errors where data were presented in a format inconsistent with CFTC requirements. Because of NatWest’s reporting failures, all or substantially all of the LTRs it submitted to the Commission from July 2012 to June 2017 contained inaccuracies.

Reporting is at the heart of the Commission’s market and financial surveillance programs, which are critical to the Commission’s mission to protect market participants and promote market integrity. Accurate swap data is thus essential to effective fulfillment of the regulatory functions of the Commission, including meaningful surveillance and enforcement programs. Large trader reporting of physical commodity swaps, in particular, is essential to the Commission’s ability to conduct effective surveillance of the physical commodity futures and economically equivalent swaps markets, a task that has historically been at the center of the Commission’s mission.

In accepting NatWest’s Offer, the Commission recognizes that NatWest provided cooperation during the investigation of this matter, and that NatWest has taken substantial remedial action to address its reporting deficiencies. The Commission notes that NatWest’s cooperation and remediation are recognized in the form of a reduced civil monetary penalty.

B. RESPONDENT

NatWest Markets Plc is a British banking and financial services company and a non-United States swap dealer headquartered in the United Kingdom. Under the legal name The Royal Bank of Scotland plc (“RBS”), NatWest was provisionally registered as a swap dealer with the Commission on December 31, 2012.

C. FACTS

During the Relevant Period, NatWest, as a provisionally registered swap dealer, constituted a “reporting entity” subject to the LTR requirements of Part 20 and had “reportable

positions,”² as defined under Part 20 of the Commission Regulations. Regulation 20.1, 17 C.F.R. § 20.1 (2019). As a reporting entity, NatWest is required to submit LTRs in the form and manner determined by the Commission. In total, during the Relevant Period, NatWest submitted LTRs that contained tens of millions of errors in the hundreds of millions of total data fields in its LTRs. These errors fell into dozens of categories, including errors where data were missing and errors where data were presented in a format inconsistent with CFTC requirements. Such errors included: (1) failing to submit LTRs for two reporting dates; (2) submitting duplicate records for certain reporting dates; (3) leaving applicable fields unpopulated for certain records;³ (4) reporting incorrect data in applicable fields for certain records;⁴ (5) reporting data in applicable fields that was inconsistent with data reported in logically related fields;⁵ (6) failing to properly aggregate positions into a single record; and (7) reporting certain positions only as of the settlement date, and not the trade date.

Prior to March 2015, NatWest had identified some of these errors and corrected them on a going forward basis, but had not re-submitted corrected historical reports to the Commission, nor had NatWest informed Commission staff of the errors it had identified.

In March 2015, the Commission’s Division of Market Oversight (“DMO”) sent NatWest a special call which raised questions about errors in NatWest’s LTRs from January to November 2013. Of the errors identified in DMO’s special call, some had been identified and remediated by NatWest prior to March 2015. Other errors were unknown to NatWest.

From March 2015 to June 2017, while NatWest continued to discuss LTR errors with DMO, and later with the Commission’s Division of Enforcement, NatWest worked to identify the root causes of errors and to remediate errors in the LTRs it submitted to the Commission on a going forward basis. In the course of this remediation work, NatWest identified additional errors that were previously unknown to NatWest and that were not identified in DMO’s special call. In June 2017, NatWest completed remediating known errors in the LTRs it submitted to the Commission on a going forward basis.

Between June and December 2018, NatWest re-submitted to the Commission corrected historical reports, beginning with LTRs from June 2017 and working backward to July 2012.

² During the Relevant Period, NatWest routinely entered into nonstandard swaps, mostly options, on bespoke, multi-asset indices; certain physical commodities were components of these indices and were reportable positions.

³ For instance, for certain records, fields reflecting strike price, unit, currency, futures equivalent month, and/or whether the position was cleared were left blank.

⁴ For instance, for certain records, NatWest incorrectly populated the futures equivalent month field with the expiration month rather than the delivery month.

⁵ For instance, for certain records, NatWest reported positional values of zero in conjunction with large notional values; and for other records NatWest incorrectly populated the non-standard swaption indicator as “standard” for records where the position indicator type was “IndexOrBasket.”

III. LEGAL DISCUSSION

A. NatWest Violated Part 20 LTR Regulations Applicable to Swap Dealers

Pursuant to Regulation 20.4, 17 C.F.R. § 20.4 (2019), swap dealers such as NatWest that meet certain criteria are required to file daily LTRs for reportable positions in physical commodity swaps. Regulation 20.4(c) requires that certain enumerated data elements be included in a swap dealer's data report. These data elements include, among others: the commodity underlying the reportable positions, the commodity reference price, futures equivalent month, long paired swap positions and short paired swap positions, swaption strike price, name of the counterparty, a cleared or uncleared indicator, and an identifier indicating that a principal or counterparty position is being reported.

Regulation 20.7, 17 C.F.R. § 20.7 (2019), provides, in relevant part:

Unless otherwise instructed by the Commission, a clearing organization or reporting entity shall submit data records and any other information required under this part to the Commission . . .
(a) Using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission.

The prescribed manner and form of reporting and submitting large trader reports is provided in the Part 20 Guidebook.⁶

Large trader reporting for physical commodity swaps is essential to the Commission's ability to conduct effective surveillance of markets in U.S. physical commodity futures and economically equivalent swaps. Failure to comply with the reporting specifications set forth by the Commission hinders the Commission's ability to efficiently process and effectively utilize this critical data. The accuracy of the reports is critical to the mission of the Commission for numerous reasons, including surveillance of the markets to detect disruptions to market integrity, enforcement, and calculating statistics that the Commission publishes to enhance market transparency. *See, e.g., In re Wells Fargo Bank, N.A.*, CFTC No. 16-32 (Sept. 27, 2016) (consent order).

LTRs submitted by NatWest during the Relevant Period omitted required data elements and reported certain data in a manner that did not conform to the specifications required by the Commission. Accordingly, NatWest violated Regulations 20.4 and 20.7.

⁶ As previously provided for in Regulation 20.8(a)(4), 17 C.F.R. § 20.8(a)(4) (2017), the Commission delegated certain authority to the Director of DMO or others as the Director designated from time to time, including the authority pursuant to Regulation 20.7 "for providing instructions or determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under [Part 20]." Regulation 20.8 was recently amended to delegate this authority to the Director of the Office of Data and Technology, with the concurrence of the Director of DMO, or such other employee or employees as the Directors may each designate from time to time. *See* Regulation 20.8(d), 17 C.F.R. §20.8(d) (2019).

B. NatWest Violated Section 4s(f)(1)(A) by Failing to Make Required Reports

Pursuant to Section 4s(f)(1)(A) of the Act, “[e]ach registered swap dealer . . . shall make such reports as are required by the Commission by rule or regulation regarding the transactions and positions and financial condition of the registered swap dealer or major swap participant.” 7 U.S.C. § 6s(f)(1)(A) (2012). NatWest provisionally registered as a swap dealer on December 31, 2012, and, while registered and being a reporting entity with reportable positions, failed to make such reports as are required by Regulations 20.4 and 20.7. Accordingly, NatWest violated Section 4s(f) of the Act.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, NatWest Markets plc, formerly The Royal Bank of Scotland plc, violated Section 4s(f) of the Act, 7 U.S.C. § 6s(f) (2012), and Regulations 20.4 and 20.7, 17 C.F.R. §§ 20.4, 20.7 (2019).

V. OFFER OF SETTLEMENT

Respondent has submitted the 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 Regulations, 17 C.F.R. pt. 148 (2019), 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; and
- 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 4s(f) of the Act, 7 U.S.C. § 6s(f) (2012), and Regulations 20.4 and 20.7, 17 C.F.R. §§ 20.4, 20.7 (2019);
 2. Orders Respondent to cease and desist from violating Section 4s(f) of the Act and Regulations 20.4 and 20.7;
 3. Orders Respondent to pay a civil monetary penalty in the amount of eight hundred and fifty thousand dollars (\$850,000) plus post-judgment interest;
 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; and
- F. Represents that it has already remediated known errors in its LTRs submitted to the Commission and put in place measures to prevent such errors from reoccurring, including, but not limited to, the following:
1. Reprograming and redesigning NatWest's LTR reporting systems to comply with CFTC requirements;
 2. Developing, testing, and implementing controls that are designed to proactively identify potential errors prior to submission;
 3. Developing and implementing controls that are designed to check for data quality and completeness; and
 4. Revising relevant policies and procedures.

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 Section 4s(f) of the Act, 7 U.S.C. § 6s(f) (2012), and Regulations 20.4 and 20.7, 17 C.F.R. §§ 20.4, 20.7 (2019).
- B. Respondents shall pay a civil monetary penalty in the amount of eight hundred and fifty thousand dollars (\$850,000) (“CMP Obligation”). If the CMP Obligation is not paid immediately, 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.

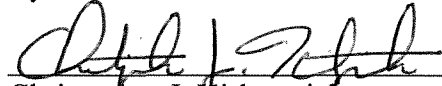
- C. Respondent and its/their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
 - 1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any 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 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 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.
3. Change of Address/Phone: Until such time as Respondent satisfies in full its 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 number and mailing address within ten calendar days of the change.

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 30, 2019