

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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9:38 am, Apr 27, 2022

In the Matter of:

William Tomita,

Respondent.

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) **CFTC Docket No. 22-15**
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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 in or about March 2020 to at least the end of March 2021 (“Relevant Period”), William Tomita (“Tomita” or “Respondent”) violated Section 6(c)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)–(3), 17 C.F.R. §180.1(a)(1)–(3) (2021) 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. Tomita admits the facts set forth below, acknowledges that his conduct violated the Act and Regulations, admits the Commission’s jurisdiction over him and the subject matter of these proceedings, 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.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, while employed at an investment management firm headquartered in New York (“Investment Manager 1”) that served as the investment manager of a private investment fund (“Investment Fund 1”), Tomita and others at Investment Manager 1 engaged in a fraudulent scheme whereby he intentionally and/or recklessly made false or misleading statements of material facts and/or omitted to state material facts necessary to make the statements made not untrue or misleading to Investment Fund 1’s swap counterparties in order to secure additional capacity for Investment Fund 1 to enlarge its swap trading positions; to obtain or maintain favorable margin rates; and, during the week of March 22, 2021, to attempt to satisfy margin calls. The false or misleading information Tomita provided included information about the size, composition, and liquidity of positions in Investment Fund 1’s entire portfolio across financial institutions, as well as information provided in connection with attempts to satisfy Investment Fund 1’s margin calls. The false or misleading information provided by Tomita concerned facts that were important for Investment Fund 1’s swap counterparties to know in making credit and risk management decisions about Investment Fund 1’s swap portfolios at those respective counterparties, including decisions regarding margin and position size. By virtue of this conduct, Tomita violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)–(3), 17 C.F.R. § 180.1(a)(1)–(3) (2021).

In accepting the Offer, the Commission recognizes Tomita’s entry into a formal cooperation agreement (“Cooperation Agreement”) with the Division of Enforcement (“Division”), which sets forth the terms of his agreement to cooperate with the Commission and the Division in connection with any investigation, litigation, or proceeding to which the Commission is a party relating to the subject matter of this Order and/or as described in the Cooperation Agreement (the “Proceedings”).

B. RESPONDENT

William Tomita is an individual residing in Florida. During the Relevant Period, Tomita was the head trader of Investment Manager 1. Tomita has never been registered with the Commission in any capacity.

C. FACTS

1. **Background**

During the Relevant Period, Tomita was the head trader at Investment Manager 1, a limited partnership formed in Delaware pursuant to Delaware law and headquartered in New York that served as the investment manager of Investment Fund 1. Investment Fund 1 was a limited partnership formed in Delaware pursuant to Delaware law and headquartered in New

York that was a private investment vehicle. During the Relevant Period, in his role at Investment Manager 1, Tomita had responsibility for communicating with representatives of financial institutions that were swap counterparties to Investment Fund 1 (“Swap Counterparties”). As the head trader of Investment Fund 1, Tomita reported directly to and was supervised by the founder and head of Investment Fund 1.

During the Relevant Period, Investment Manager 1, as investment manager for Investment Fund 1, caused Investment Fund 1 to enter into numerous swap transactions with various Swap Counterparties, including several Swap Counterparties provisionally registered with the Commission as swap dealers. Investment Fund 1 sought exposure to equities, among other ways, by entering into long total return swaps (“TRS”)¹ based on single name securities. In order to hedge the risk imposed by these long positions, Investment Fund 1 also entered into certain short TRS positions that were based on: (i) a custom index of more than nine component securities (“custom basket swaps”); or (ii) an exchange traded fund that provided exposure to an index of hundreds of component securities (“ETF swaps,” and together with the custom basket swaps, “broad-based security index TRS”).²

Investment Fund 1’s swap transactions were generally subject to credit and risk limitations imposed by Investment Fund 1’s Swap Counterparties. For example, certain of Investment Fund 1’s Swap Counterparties permitted Investment Fund 1 to transact on a leveraged basis, provided it met certain margin requirements. In addition to margin requirements, certain of Investment Fund 1’s Swap Counterparties set other formal or informal credit and risk-related limitations on Investment Fund 1’s ability to transact swaps. Such limitations included setting a cap on the total notional value of Investment Fund 1’s portfolio at those respective Swap Counterparties; requiring that Investment Fund 1 maintain a certain ratio of long to short positions in its portfolio at that Swap Counterparty (which Investment Fund 1 met on the short side primarily by maintaining short broad-based security index TRS positions); and/or requiring that Investment Fund 1 enter into highly liquid diversified swap positions.

Starting around March 2020, Investment Fund 1 began to increase its exposure in certain long single name TRS positions, causing its highly leveraged portfolio at particular Swap Counterparties, as well as its overall portfolio across Swap Counterparties, to become more concentrated. Through the rest of 2020 and into 2021, representatives of Investment Fund 1 periodically communicated with representatives of its Swap Counterparties to provide information about Investment Fund 1 and to seek additional capacity to increase the size of its long single name TRS positions. Although Investment Fund 1’s portfolio became more concentrated in long single name TRS positions, its portfolio at many of its Swap Counterparties

¹ A total return swap is an agreement between two counterparties where one party, the seller of the credit risk, agrees to pay the other party the difference in value of a specified asset, index or derivative of an asset or an index, multiplied by an agreed-upon notional value should that value increase between specified periods of time. In exchange, the other party, the buyer of the credit risk, agrees to pay the difference in value of the specified asset multiplied by the notional value should that value decrease between the same specified periods of time. <https://www.cftc.gov/MarketReports/SwapsReports/DataDictionary/index.htm>.

² The broad-based security index TRS had an index of more than nine or more component securities and did not meet any of the other criteria for a narrow-based security index set forth in Section 1a(35)(A) of the Act, 7 U.S.C. § 1a(35)(A).

also included short broad-based security index TRS positions, which were needed to satisfy counterparty credit and risk management requirements. In many instances, in order to increase the size of its concentrated long single name TRS positions while obtaining or maintaining favorable margin rates, Investment Fund 1 also had to increase the size of its short broad-based security index TRS positions.

During the beginning of the week of March 22, 2021, certain of Investment Fund 1's concentrated long single name TRS positions dropped in value dramatically. Thereafter, certain of Investment Fund 1's Swap Counterparties issued substantial margin calls on its swap portfolio, and by March 25, 2021, Investment Fund 1 was unable to meet all of its margin calls due that day.

2. Tomita's Participation in a Fraudulent Scheme

During the Relevant Period, Tomita, in his capacity as head trader of Investment Manager 1, participated in a fraudulent scheme where he intentionally and/or recklessly provided false or misleading information and/or omitted to state material facts necessary to make that information not untrue or misleading. Among other things, Tomita provided false or misleading information and/or omitted to state material facts about the size, composition, and liquidity of positions in Investment Fund 1's entire portfolio across Swap Counterparties in order to secure additional capacity for Investment Fund 1 to enlarge its long single name TRS positions; to obtain or maintain favorable margin rates; and, during the week of March 22, 2021, to attempt to satisfy margin calls. The false or misleading information provided by Tomita concerned facts or omitted facts that were important for Investment Fund 1's Swap Counterparties to know in making credit and risk management decisions about Investment Fund 1's swap portfolios at those respective Swap Counterparties.

a. Tomita's False or Misleading Statements Concerning Investment Fund 1's Portfolio

During the Relevant Period, Tomita engaged in discussions with representatives of Investment Fund 1's Swap Counterparties who were gathering information about Investment Fund 1 in order to make credit and risk management decisions about its portfolio at their respective institutions, which included both long single name TRS positions and short broad-based security index TRS positions. In many instances, Tomita intentionally and/or recklessly provided false or misleading information and/or omitted to state material facts necessary to make that information not untrue or misleading to its Swap Counterparties.

For example, Tomita provided information to Swap Counterparty 1 that omitted material facts regarding the size of Investment Fund 1's overall position in Company 1, one of Investment Fund 1's largest positions. On January 29, 2021, Tomita had a telephone conversation with representatives of Swap Counterparty 1 regarding Company 1. Prior to the call, Swap Counterparty 1 learned from certain public filings that several other swap dealers were among Company 1's largest shareholders.³ During the call with Tomita, Swap Counterparty 1 asked

³ To hedge market risk associated with long swap positions, swap dealers frequently buy equivalent cash positions in the stock underlying the swap.

Tomita if he knew why so many other swap dealers were large shareholders of Company 1. Tomita responded, in substance, that the other swap dealer shareholders related to other hedge funds that invested in Company 1 through swap transactions. This statement was false or misleading because it only referred to other hedge funds who invested in Company 1 while omitting the material fact that Investment Fund 1 had invested in Company 1 through swap transactions with many of the same swap dealers that Swap Counterparty 1 was inquiring about. Tomita intentionally failed to provide this material information to Swap Counterparty 1 and as a result the true size and risk of Investment Fund 1's total Company 1 position was concealed from Swap Counterparty 1.

Tomita also intentionally gave false or misleading explanations for why Investment Fund 1 was unable to move certain positions from one swap dealer to another. On or around November 11, 2020, Swap Counterparty 2 expressed concern to Investment Manager 1 that the amount of margin that Investment Fund 1 had posted with Swap Counterparty 2 was insufficient to account for the risk associated with Investment Fund 1's positions. As a result, Swap Counterparty 2 asked Tomita to have Investment Fund 1 reduce risk by transferring concentrated and illiquid (and therefore riskier) positions to other swap dealers and transferring more liquid (and hence less risky) positions to Swap Counterparty 2. On November 11, 2020, Tomita informed Swap Counterparty 2, in substance, that Investment Fund 1 could not move these positions as requested due to year-end tax planning concerns. Tomita knew this statement was false or misleading. In fact, Tomita knew that Investment Fund 1 was unable to move its concentrated illiquid positions from Swap Counterparty 2 to other swap dealers because Investment Fund 1 had exhausted all of its available capacity at other dealers, or because increasing those positions at other dealers would have resulted in higher margin rates. In addition, Tomita knew that Investment Fund 1 could not transfer liquid positions from other dealers to Swap Counterparty 2 because other dealers required Investment Fund 1 to maintain liquid positions as a risk reducing measure, and failing to maintain those liquid risk reducing positions would have resulted in higher margin rates. Nevertheless, Tomita intentionally gave a false or misleading explanation to conceal the true risk of Investment Fund 1's swap positions with Swap Counterparty 2.

Tomita intentionally and/or recklessly made false statements or omitted material facts from his statements about Investment Fund 1 in an effort to maintain and/or purchase additional long single name TRS positions and to obtain or maintain favorable margin rates. Tomita understood that if he had told the truth about Investment Fund 1's portfolio, its Swap Counterparties might take measures such as increasing Investment Fund 1's margin requirements or limiting, restricting, or reducing Investment Fund 1's trade capacity. By Tomita making false statements or omitting material facts from his statements to Investment Fund 1's Swap Counterparties, Investment Fund 1 was able to maintain and/or enlarge its long single name TRS positions, maintain existing trade capacity, secure additional capacity to enlarge its TRS positions, and obtain or maintain favorable margin rates. Tomita also understood that Investment Fund 1 needed to maintain and/or increase its short exposure in order to maintain favorable margin rates and/or enlarge its long single name TRS positions. As a practical matter, Investment Fund 1 typically increased its short exposure through broad-based security index TRS positions, as those positions had been approved and encouraged by several Swap Counterparties as a risk-reducing measure.

b. Tomita’s False or Misleading Statements in Connection with Attempting to Meet Margin Calls During the week of March 22, 2021.

During the week beginning March 22, 2021, Tomita continued to make false or misleading statements to representatives of Investment Fund 1’s Swap Counterparties in connection with attempts to meet Investment Fund 1’s margin calls.

On March 24, 2021, Investment Fund 1 faced substantial margin calls due by the close of business that day, and its portfolio continued to decline further during the course of the day, requiring additional margin calls due by the close of business on March 25, 2021. As a result, many of Investment Fund 1’s Swap Counterparties sought assurances from Investment Fund 1 that it would be able to meet the margin calls. During a recorded telephone call with a representative of Swap Counterparty 3, Tomita recklessly provided false assurances that although Investment Fund 1 had a liquidity problem, it did not have a solvency problem.

Tomita understood that by providing false information to Investment Fund 1’s Swap Counterparties, Investment Fund 1 delayed the forced liquidation of its portfolio, to the detriment of those Swap Counterparties.

III. LEGAL DISCUSSION

A. Use of a Manipulative or Deceptive Device in Violation of Section 6(c)(1) of the Act and Regulation 180.1(a)(1)–(3)

Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), makes it “unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, . . . any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate.” Regulation 180.1(a)(1)–(3), 17 C.F.R. § 180.1(a)(1)–(3) (2021), in turn, provides that “it shall be unlawful for any person, directly or indirectly, in connection with any swap, . . . to intentionally or recklessly: (1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; (2) Make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; or (3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person.”

As described above, Tomita, among other things, intentionally or recklessly, directly and indirectly, in connection with swaps: (a) used or employed, or attempted to use or employ, manipulative devices, schemes, and artifices to defraud; (b) made, or attempted to make, untrue or misleading statements of material facts; (c) omitted to state material facts necessary in order to make statements made not untrue or misleading; and (d) engaged, or attempted to engage, in acts, practices, and courses of business, which operated or would operate as a fraud or deceit upon any person, in violation of Section 6(c)(1) of the Act, and Regulation 180.1(a)(1)–(3).⁴

⁴ Because certain swaps in connection with the fraud perpetrated by Tomita are based on a broad-based securities index, this matter falls within the Commission’s jurisdiction. See Section 1a(47)(A) and (B) of the Act, 7 U.S.C.

IV. FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Tomita violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)–(3), 17 C.F.R. §180.1(a)(1)–(3) (2021).

V. OFFER OF SETTLEMENT

Tomita has submitted the Offer in which he:

- 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. Admits to all of the findings made in 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. Judicial review by any court;
 - 5. Any defense based on the statute of limitations applicable to any charges brought in connection with this Order;
 - 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 he 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 (2021), relating to, or arising from, this proceeding;
 - 8. Any and all claims that he 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

§ 1a(47)(A), (B); *see also* Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48,208, 48,271 (Aug. 13, 2012) (“[A] Title VII instrument in which the underlying reference of the instrument is a security index that is not a narrow-based security index (i.e., the index is broad-based) is a swap subject to regulation by the CFTC”).

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. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Tomita has consented in the Offer; and
 - F. Consents to additional proceedings to determine what, if any, other sanctions may be assessed against him. In connection with such additional proceedings, he further consents that: (a) the findings of fact in Section II of this Order shall be accepted as and deemed true by the Commission or Presiding Officer; (b) Tomita will be precluded from arguing that he did not violate the federal laws as described in Sections III and IV of this Order; and (c) he may not challenge the validity of his consents and agreements in the Offer or this Order; and
 - 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 Tomita violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)–(3), 17 C.F.R. §180.1(a)(1)–(3) (2021);
 2. Orders Tomita to cease and desist from violating Section 6(c)(1) of the Act and Regulation 180.1(a)(1)–(3); and
 3. Orders Tomita to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Tomita shall cease and desist from violating Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)–(3), 17 C.F.R. §180.1(a)(1)–(3) (2021).
- B. The Commission reserves its determination as to other sanctions against Tomita at this time based upon his cooperation in a Commission investigation and related proceedings, pursuant to the terms of the Cooperation Agreement, and his undertaking to continue to cooperate, as set forth in this Order in Section VI.C.2 below. The determination of what, if any, other sanctions may be assessed against him will be made at a public hearing for the purpose of taking evidence and hearing arguments on the issue in accordance with the Commission's Rules of Practice, 17 C.F.R. pt. 10 (2021), at a time and place to be fixed as provided in Regulation 10.61, 17 C.F.R. § 10.61 (2021), except that in the additional proceedings: (a) the findings of fact in Section II of this Order shall be accepted as and

deemed true by the Presiding Officer; (b) Tomita will be precluded from arguing that he did not violate the federal laws as described in Sections III and IV of this Order; and (c) Tomita may not challenge the validity of his consents and agreements in the Offer or this Order. All post-hearing procedures shall be conducted pursuant to Regulations 10.81-10.107, 17 C.F.R. §§ 10.81-10.107 (2021).

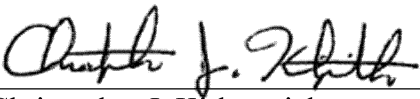
C. Tomita shall comply with the following conditions and undertakings set forth in the Offer:

1. Public Statements: Tomita agrees that neither he nor any agents or employees under his 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 Tomita's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Tomita shall comply with this agreement, and shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement.
2. Cooperation with the Commission: Tomita shall cooperate fully and truthfully with the Commission, including the Division, in any Proceedings. As part of such cooperation, Tomita agrees to:
 - a. preserve and produce to the Commission in a responsive and prompt manner, as requested by Division staff, all relevant non-privileged documents, information, and other materials wherever located, in the appropriate possession, custody, or control of Tomita;
 - b. utilize his knowledge and skill to explain transactions, interpret information and terminology, or identify new and productive lines of inquiry;
 - c. prepare and appear for interviews and testimony at such times and places as requested by Division staff;
 - d. respond completely and truthfully to all inquiries and interviews, when requested to do so by Division staff;
 - e. identify and authenticate relevant documents and other evidentiary materials, execute affidavits and/or declarations, and testify completely and truthfully at depositions, trial, and other judicial proceedings, when requested to do so by Division staff;
 - f. enter into tolling agreements, when requested to do so by Division staff, during the period of cooperation;

- g. waive any defense based on the statute of limitations applicable to any charges brought in connection with any Proceedings;
 - h. consent to procedural matters, when requested to do so by Division staff, in connection with the Proceedings;
 - i. accept service by mail, electronic mail, or facsimile transmission of notices or subpoenas for documents and/or testimony;
 - j. appoint his attorney as agent to receive service of such notices and subpoenas;
 - k. waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules in connection with requests or subpoenas of Division staff; and
 - l. serve by hand delivery or by next-day mail all written notices and correspondence required by or related to the Cooperation Agreement to the Director of the Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, NW, Three Lafayette Centre, Washington, DC 20581, unless otherwise directed in writing by Division staff.
3. Change of Address/Phone: Until such time as Tomita satisfies in full his obligations as set forth in the Cooperation Agreement and this Order, Tomita shall provide written notice to the Commission by certified mail of any change to his 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: April 27, 2022