



UNITED STATES OF AMERICA
 Before the
 COMMODITY FUTURES TRADING COMMISSION

_____)
)
In the Matter of:)
)
BNP Paribas)
)
) **CFTC Docket No. 22-19**
Respondent.)
)
 _____)

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
 SECTION 6(c) AND 6(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 during the period from at least 2016 through 2021 (the “Relevant Period”), BNP Paribas (“BNPP” or “Respondent”) violated Sections 2(a)(13), 4r(a)(3), 4s(h)(1), 4s(h)(3), and 4s(h)(1)(B) of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 2(a)(13), 6r(a)(3), 6s(h)(1), 6s(h)(3), and 6s(h)(1)(B) and Regulations 43.3, 45.3, 23.431(d), and 23.602, 17 C.F.R. §§ 23.431(d), and 23.602 (2021); 17 C.F.R. § 43.3, 45.3 (2020) (amended 2021)¹ of the Commission’s 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 6(d) of the Act, Making Findings, and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.²

¹ The Commission amended Parts 43, 45, and 49 on November 25, 2020, with the new regulations becoming effective on January 25, 2021. Certain Swap Data Repository and Data Reporting Requirements, 85 FR 75601 (Nov. 25, 2020). The amendments did not affect the substantive requirements at issue in this order.

² 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

II. FINDINGS

The Commission finds the following:

A. SUMMARY

Over a period of more than five years, from at least 2016 through 2021, BNPP failed to correctly report numerous swap transactions consistent with the requirements of the Act and the Regulations. In addition, during 2016 to 2017, BNPP adjusted daily mark disclosures to swap counterparties on certain swap transactions in a manner that was not consistent with the Act and the Regulations. BNPP personnel contemporaneously referred to these adjustments as “smoothing.”

Consequently, during the Relevant Period, BNPP inadequately supervised its swap dealer. This failure to supervise the swap dealer resulted in recurrent, multitudinous violations of the provisions of the Act and Regulations pertaining to swap reporting and daily mark disclosures.

In accepting Respondent’s Offer of Settlement, the Commission recognizes BNPP’s substantial cooperation during the Division of Enforcement’s (“Division”) investigation of this matter. The Commission also acknowledges Respondent’s representations concerning its remediation in connection with this matter. The Commission’s recognition of BNPP’s substantial cooperation and appropriate remediation is further reflected in the form of a reduced civil monetary penalty.

B. RESPONDENT

BNP Paribas, which was formed in 2000 by a merger between BNP and Paribas, became a provisionally registered swap dealer on December 31, 2012.

C. FACTS

1. **Swap Reporting Violations**

During the Relevant Period, BNPP did not report millions of swap transactions in a manner consistent with the Act and the Regulations. BNPP’s reporting failures during this period, which included underreporting, overreporting, and other reporting of swap transactions in a manner inconsistent with Commission rules, violated the Act and the Regulations.

Much of BNPP’s underreporting and overreporting was documented in monthly internal reports that were circulated contemporaneously within BNPP, but was not disclosed to the Commission. As documented in these reports, and in additional analysis subsequently conducted by BNPP during the Division of Enforcement’s investigation, BNPP underreported at least

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.

123,315 swaps and overreported at least 261,643 swaps during the Relevant Period. Because swap transactions persist over time, and swap dealers normally make multiple reports regarding each reportable swap transaction, there were during this period more than 500,000 reports that should have been made, but were not made, in connection with the 123,315 underreported transactions.

The specific causes of BNPP's failure to report swap transactions that should have been reported were varied, but included the failure to report more than 6,000 swap transactions with U.S. persons, because the counterparties had been incorrectly classified as non-U.S. persons. As a result of this failure, during the Relevant Period, more than 300,000 reports relating to these transactions, reports that were required by the Act and the Regulations, were not made by BNPP.

BNPP also entered into more than 3 million swap transactions during the Relevant Period that were reported, but were not reported consistent with Commission rules, because BNPP failed to include in its reports for these transactions a required field indicating whether or not the transaction was with a non-swap dealer financial entity. This data field is an important one for assessing swap dealers' regulatory compliance.³ Accordingly, BNPP's failure to provide this field over a period of many years is a breach of the Act and the Regulations.

From 2016 to 2018, the swap dealer also failed to correctly report thousands of bunched trades. Instead of correctly reporting them as allocations of trades, BNPP reported these transactions as new trades.

In addition, from 2016 to 2020, BNPP incorrectly reported certain commodity swaps. These trades were reported, but were incorrectly described as equity trades rather than commodity trades. In total, approximately 3,000 transactions were incorrectly reported in this fashion.

2. Daily Mark Disclosure Violations

Daily marks, which swap dealers are required to provide on a daily basis to swap counterparties, are supposed to be an estimate of the current value of the swap. Daily marks are not supposed to incorporate amounts for profit, credit reserve, hedging, funding, liquidity, or any other costs or adjustments.

Contrary to this requirement, during the period 2016 to 2017, BNPP's adjusted daily mark disclosures for 82 swap transactions included adjustments, which resulted in approximately 19,000 adjusted daily mark disclosures being made to the relevant swap counterparties.⁴ This process was contemporaneously described by BNPP personnel as "smoothing." The two-fold result was that these daily-mark disclosures were: (1) inconsistent with the Act and the

³ See, e.g., Swap confirmation, 17 C.F.R. § 23.501(a)(3)(i) (2021); Swap trading relationship documentation, 17 C.F.R. § 23.504(b)(4)(i) (2021); End user exemption documentation, 17 C.F.R. § 23.505(a)(3) (2021); Definitions applicable to margin requirements, 17 C.F.R. § 23.151 (2021); and Cross-border application of swap dealer requirements, 17 C.F.R. § 23.23 (2021).

⁴ Because daily mark disclosures are normally made on every business day, there usually are many daily mark disclosures for each swap.

Regulations, and (2) inconsistent with how BNPP calculated daily marks for other counterparties (e.g., counterparties that were not given smoothed daily marks). Eventually, BNPP compliance personnel concluded that this daily-mark smoothing was inconsistent with Commission rules, and the process for generating daily marks, at least for swap transactions subject to the Act and the Regulations, was changed.

3. Failure to Supervise

From at least 2016 until 2021, BNPP did not provide adequate supervision to ensure that the swap dealer complied with the Act and the Regulations. As listed above, this failure to supervise the swap dealer resulted in millions of violations of provisions of the Act and Regulations pertaining to swap reporting and daily mark disclosures.

Certain swap dealer compliance issues were not identified in a timely fashion by BNPP personnel, with the result that these violations persisted for years. On at least one occasion, a swap reporting issue was flagged internally by BNPP compliance personnel, but not adequately addressed by BNPP at that time, apparently due to concerns that a comprehensive fix would take significant time and allocation of resources.⁵

4. BNPP's Cooperation

Throughout the Division's investigation, BNPP provided substantial cooperation. BNPP's cooperation included conducting a detailed analysis of historical records to assess the number of swap reporting violations during the Relevant Period. In addition, BNPP represents it has taken steps to remediate the swap dealer's deficiencies and improve its processes going forward.

III. LEGAL DISCUSSION

A. BNPP's Swap Reporting Failures Violated Sections 2(a)(13) and 4r(a)(3) of the Act, 7 U.S.C. §§ 2(a)(13), 6r(a)(3) and Regulations 43.3 and 45.3, 17 C.F.R. §§ 43.3, 45.3 (2020) (amended 2021)

Sections 2(a)(13) and 4r(a)(3) of the Act, 7 U.S.C. §§ 2(a)(13), 6r(a)(3), and Regulations 43.3 and 45.3, 17 C.F.R. §§ 43.3, 45.3 (2020) (amended 2021) require reporting of reportable swap transactions to a registered Swap Data Repository ("SDR"), as soon as technologically practicable, after execution.

These swap data reporting provisions were designed to enhance transparency, promote standardization, and reduce systemic risk. The accuracy and completeness of swap reporting are critical to the Commission's mission to protect market participants and to ensure market integrity. *See, e.g., In re NatWest Markets Plc*, CFTC No. 18-32, 2018 WL 4502270 (Sept. 14, 2018) (consent order); *In re Citibank, NA.*, CFTC No. 17-26, 2017 WL 4280594 (Sept. 25, 2017)

⁵ Other violations at the swap dealer were identified by BNPP personnel and addressed contemporaneously. Not all of these violations were disclosed to the Commission.

(consent order); *In re Société Générale S.A.*, CFTC No. 17-01, 2016 WL 7210405 (Dec. 7, 2016) (consent order).

Through its underreporting and overreporting of swap transactions, and its failure to report swap transactions consistent with Commission Regulations, BNPP violated Sections 2(a)(13) and 4r(a)(3) of the Act and Regulations 43.3 and 45.3.

B. BNPP’s Daily Mark Smoothing Violated Section 4s(h)(1) and (h)(3) of the Act, 7 U.S.C. § 6s(h)(1) and (h)(3), and Regulation 23.431(d), 17 C.F.R. § 23.431 (2021)

Section 4s(h)(1) and (h)(3) of the Act, 7 U.S.C. § 6s(h)(1) and (h)(3) (2018), and Regulation 23.431(d), 17 C.F.R. § 23.431(d) (2021), require swap dealers to disclose to counterparties that are not swap dealers, major swap participants, security-based swap dealers, or major security-based swap participants, for uncleared swaps, daily marks reflecting the current mid-market mark of the swap. Regulation 23.431(d)(2) specifically states that the daily marks disclosed to counterparties of uncleared swaps “shall not include amounts for profit, credit reserve, hedging, funding, liquidity, or any other costs or adjustments.”

These daily-mark disclosure requirements aim to ensure that swap counterparties receive an accurate and consistent estimate of the swap’s current value. *See, e.g., In re Société Générale*, CFTC No. 21-36, 2021 WL 4501471 (Sep. 29, 2021) (consent order).

Through its “smoothing” of daily marks provided to certain swap counterparties, BNPP violated Section 4s(h)(1) and (h)(3) of the Act and Regulation 23.431(d).

C. BNPP’s Failure to Supervise Violated Sections 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B) (2018), and Regulation 23.602, 17 C.F.R. § 23.602 (2021)

Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B) requires “diligent supervision of the business of the registered swap dealer.”

Regulation 23.602, 17 C.F.R. § 23.602 (2021) requires that swap dealers “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).”

Under Regulation 23.602, the failure to diligently supervise the swap dealer’s activities, as evidenced by repeated violations, or by violations that are not promptly corrected, is sufficient to establish a failure to supervise violation. *See, e.g., In re Commerzbank AG*, CFTC No. 19-03, 2018 WL 5921385 at *12 (Nov. 8, 2018) (consent order). 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 (2021). Under Regulation 166.3, when the registrant fails to perform its supervisory duties diligently, that fact alone is sufficient to establish a violation of the supervision requirement. *See, e.g., In re Murlas Commodities, Inc.*, CFTC No. 85-29, 1995 WL 523563, at *9 (Sept. 1, 1995); *In re Paragon Futures Ass’n*, CFTC No. 88-18, 1992 WL 74261, at *14 (Apr. 1, 1992). 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. *Paragon Futures*, 1992 WL 74261, at *14.

By failing to supervise the activities of its swap dealer, BNPP violated Section 4s(h)(1)(B) of the Act and Regulation 23.602.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent violated Sections 2(a)(13), 4r(a)(3), 4s(h)(1), 4s(h)(3), and 4s(h)(1)(B) of the Act, 7 U.S.C. §§ 2(a)(13), 6r(a)(3), 6s(h)(1), 6s(h)(3), and 6s(h)(1)(B) (2018) and Regulations 43.3, 45.3, 23.431(d), and 23.602, 17 C.F.R. §§ 23.431(d), and 23.602 (2021); 17 C.F.R. § 43.3, 45.3 (2020) (amended 2021) of the Commission’s Regulations.

V. OFFER OF SETTLEMENT

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

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission to all the matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on a 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 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;
 - 7. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, (“SBREFA”), Pub. L. No. 104-121, tit. II, §§ 201-253, 110 Stat 847-74 (codified as amended 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 upon 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 Sections 2(a)(13), 4r(a)(3), 4s(h)(1), 4s(h)(3), and 4s(h)(1)(B) of the Act, 7 U.S.C. §§ 2(a)(13), 6r(a)(3), 6s(h)(1), 6s(h)(3), and 6s(h)(1)(B) (2012) and Regulations 43.3, 45.3, 23.431(d), and 23.602, 17 C.F.R. §§ 23.431(d), and 23.602 (2021); 17 C.F.R. §§ 43.3, 45.3 (2020) (amended 2021) of the Commission's Regulations;
 2. Orders Respondent to cease and desist from violating Sections 2(a)(13), 4r(a)(3), 4s(h)(1), 4s(h)(3), and 4s(h)(1)(B) of the Act, 7 U.S.C. §§ 2(a)(13), 6r(a)(3), 6s(h)(1), 6s(h)(3), and 6s(h)(1)(B) and Regulations 43.3, 45.3, 23.431(d), and 23.602, 17 C.F.R. §§ 43.3, 45.3, 23.431(d), and 23.602 (2021) of the Commission's Regulations;
 3. Orders Respondent to pay a civil monetary penalty in the amount of six-million dollars (\$6,000,000), plus post-judgment interest within ten 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 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. Respondent shall cease and desist from violating Sections 2(a)(13), 4r(a)(3), 4s(h)(1), 4s(h)(3), and 4s(h)(1)(B) of the Act, 7 U.S.C. §§ 2(a)(13), 6r(a)(3), 6s(h)(1), 6s(h)(3), and 6s(h)(1)(B) (2018) and Regulations 43.3, 45.3, 23.431(d), and 23.602, 17 C.F.R. §§ 43.3, 45.3, 23.431(d), and 23.602 (2021) of the Commission's Regulations.
- B. Respondent shall pay a civil monetary penalty in the amount of six-million dollars (\$6,000,000) ("CMP Obligation"). If the CMP Obligation is not paid in full within ten days of the date of entry of the Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of the Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of the 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, Respondent shall make the payment 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 facsimile
Tonia.King@faa.gov

If payment is to be made by electronic transfer, Respondent shall contact Tonia King 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 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.

- 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, 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. Reports Regarding Swap Dealer Compliance: Respondent agrees to make a written report to the Division of Enforcement regarding the swap dealer's compliance with the provisions of the Act and Regulations that are the subject of this order. This report will be signed by a Chief Compliance Officer. Respondent will submit this written

report to the Division within one year of entry of this Order. The report will describe the swap dealer's remediation of its swap reporting and daily-mark disclosure issues, and any ongoing material non-compliance. The report will specifically describe, with respect to swap reporting and daily-mark disclosures, any material non-compliance with the Act and Regulations during the preceding year and related remediation.

4. 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.

5. Notices to Creditors: Until such time as Respondent satisfies in full its 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:

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

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

By the Commission.



Robert N. Sidman
Deputy Secretary of the Commission
Commodity Futures Trading Commission

Dated: July 5, 2022