

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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12:11 pm, Sep 30, 2022

In the Matter of:

BGC Derivative Markets, L.P.,

Respondent.

CFTC Docket No. 22-52

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6b 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 on or about January 2017 to March 2022 (“Relevant Period”), Respondent BGC Derivative Markets, L.P. (“BGCD”) violated Sections 2(a)(13) and 5h(f)(9)-(10) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 2(a)(13), 7b-3(f)(9)-(10); and, Regulations 16.01, 37.900, 37.901, and 37.1000, 17 C.F.R. §§ 16.01, 37.900, 37.901, 37.1000 (2021), of Commission Regulations (“Regulations”) promulgated thereunder. The Commission has further reason to believe that during the Relevant Period, BGCD also violated Regulation 43.3 (since amended), 17 C.F.R. § 43.3 (2020) (amended 2021).¹ Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether BGCD 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, BGCD has submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, BGCD consents to the entry of this Order

¹ On November 25, 2020, Part 43 of the Regulations was amended by the Commission. These amendments became effective January 25, 2021, but compliance was not required until May 25, 2022. The provisions of Regulation 43.3 at issue in this action, specifically the then current Regulation 43.3(b)(1) and (e)(1), were amended at that time. Substantively, the obligations of SEFs, such as BGCD, under these amended provisions remained the same, and in the instance of Regulation 43.3(e) (related to correction of errors), became more precise. Thus, although the prior version of this Regulation was implicated in this action, current Regulation 43.3(a)(2) and (e) continues to prohibit the same underlying conduct charged in this action. For simplicity, where not otherwise indicated, citations to Regulation 43.3 and its subparts refer to obligations under both prior Regulation 43.3 (amended), 17 C.F.R. 43.3 (2020) (amended 2021) and current Regulation 43.3 (2021).

Instituting Proceedings Pursuant to Section 6b of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.²

II. FINDINGS

The Commission finds the following:

A. SUMMARY

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 essential to the effective fulfillment of the regulatory functions of the Commission, including meaningful surveillance and enforcement programs. Moreover, the availability and accuracy of publicly published swap data is key to ensuring transparency into swap transactions, volumes, and pricing on a timely basis.

As a registered swap execution facility (“SEF”), BGCD is required to comply with certain reporting and publication requirements related to the swap transactions it executes. During the Relevant Period, as the result of fourteen separate reporting systems issues, BGCD collectively failed to report or accurately report or publish thousands of transactions executed on the SEF over hundreds of trading days. It also failed in at least two instances to timely correct reporting errors. This conduct violated Sections 2(a)(13) and 5h(f)(9)-(10) of the Act, 7 U.S.C. §§ 2(a)(13), 7b-3(f)(9)-(10); and, Regulations 16.01, 37.900, 37.901, 37.1000, and 43.3, 17 C.F.R. §§ 16.01, 37.900, 37.901, 37.1000 (2021) and 43.3 (2020) (amended 2021).

In accepting Respondent’s Offer, the Commission acknowledges BGCD’s cooperation with the Division of Enforcement’s (the “Division”) investigation of this matter and BGCD’s representations concerning remediation.

B. RESPONDENT

BGC Derivative Markets, L.P. is a Delaware limited liability partnership, with its principal place of business in New York, New York. BGCD provisionally registered as a SEF with the Commission on September 19, 2013. On January 22, 2016, BGCD was granted full SEF registration status.

C. FACTS

During the Relevant Period, BGCD failed to report or accurately report thousands of swap transactions executed on the SEF. BGCD’s reporting errors stemmed from at least

² BGCD 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. BGCD 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. BGCD does not consent to the use of the Offer or of this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

fourteen distinct systems issues. As a result of eleven of those systems issues, BGCD failed to report or accurately report nearly 12,500 swap transactions to the Commission and/or publish them on its public website as required under Part 16 of the Regulations, 17 C.F.R. pt. 16 (2021). As a result of three other systems issues, BGCD failed to report real-time transaction and pricing data for over 3,500 transactions to a swap data repository (“SDR”) as required under Part 43 of the Regulations, 17 C.F.R. pt. 43 (2021), and, for a subset of these transactions, also failed to submit corrected data to the SDR until weeks after discovering the error. In aggregate, these fourteen incidents led to BGCD’s failure to report or accurately report (including both under and over reporting) over 16,000 swap transactions in various products (Interest Rate, FX, Credit, and Equities), on hundreds of trading dates.

During much of the Relevant Period, BGCD had inadequate processes and procedures for reporting swap transactions and identifying reporting issues as they arose. Specifically, BGCD had no system in place to validate that reportable transactions occurring on the SEF were complete and accurately included in its real-time and end of day (“EOD”) reporting to its SDR, the Commission, and on its website. As a result, BGCD did not timely identify the majority of these incidents. Over half of these reporting incidents were unknown to BGCD for eight months or more, and for two of these incidents, BGCD did not detect them for over four years. BGCD learned of many of the reporting incidents only as the result of an inquiry from a third party or in the course of responding to requests in connection with the Division’s investigation.

BGCD was also slow to address the deficiencies in its processes and procedures for reporting swap transactions and identifying and correcting reporting issues. By at least March 2020, BGCD’s compliance department had identified the need for a reconciliation process to confirm that all transactions on the SEF were being reported, and even recommended to BGCD’s Board of Directors, as part of the 2019 Annual Chief Compliance Officer’s Compliance Report, that a reconciliation process be established. However, BGCD did not implement a reconciliation process until April 2021. By this time, BGCD was aware both of additional swap reporting errors and that its swap reporting was the subject of a Division investigation.

BGCD represents that in April 2021 it implemented reconciliation tools to allow it to identify and begin correcting reporting errors on no longer than a T+1 basis for all Interest Rate products executed on the SEF, and that these tools have now been expanded to Credit swaps executed on the SEF. BGCD further represents that it has corrected its past reporting to the Commission or the SDR, as applicable, and that it has either corrected or removed any erroneous published data from its website related to these incidents.

III. LEGAL DISCUSSION

A. BGCD Failed to Report and Accurately Report Swap Data to the Commission and/or to the Public in Violation of Regulation 16.01.

BGCD violated Regulation 16.01, 17 C.F.R. § 16.01 (2021), when it failed to report or accurately report swap data to the Commission and to the public. Part 16 of the Regulations sets forth the information that SEFs and other reporting markets are required to record and report to the Commission on a daily basis. *See* 17 C.F.R. pt. 16 (2021). For swaps, required reporting includes such items as the total trading volume by product type and term life of the swap and

various prices. *See* Regulation 16.01(a)(1)(iii) and (2)(iv) and (b). “The accuracy and completeness of swap reporting are critical to the Commission’s mission to protect market participants and to ensure market integrity.” *Commodity Futures Trading Comm’n v. Deutsche Bank AG*, 2020 WL 4611985, at *8 (S.D.N.Y. June 17, 2020) (consent order) (citation omitted); *see also In re ICE Futures U.S., Inc.*, CFTC No. 15-17, 2015 WL 1276463, *5 (March 16, 2015) (consent order) (recognizing that accuracy and completeness of Part 16 reports are critical to this mission).

In addition to reporting this information to the Commission, SEFs and other reporting markets are required daily to publish this same information for the prior day’s trading activity in a manner that is accessible to the general public. *See* Regulation 16.01(e). Market transparency cannot exist if the information provided to the public is inaccurate. It is inherent in the reporting requirements that the reports provided to the Commission and the public be accurate and complete. *See In re ICE Futures U.S., Inc.*, CFTC No. 15-17, 2015 WL 1276463, *5 (March 16, 2015) (consent order); *In re JP Morgan Securities LLC*, CFTC No. 14-19 (July 29, 2014) (consent order).

BGCD violated Regulation 16.01 when it failed to report or accurately report thousands of swap transactions to the Commission and/or to the public on its public website during the Relevant Period.

B. BGCD Failed to Report and Timely Correct Swap Data to an SDR in Violation of Section 2(a)(13) of the Act and Regulation 43.3.

The Act requires all swaps (whether cleared or uncleared) to be reported to a registered SDR and establishes specific requirements for real-time public reporting of swap transaction data. *See* Section 2(a)(13), 7 U.S.C. § 2(a)(13). Pursuant to these requirements and as provided for under the Act, in 2012, the Commission adopted implementing regulations requiring that all publicly reportable swap transactions be reported to a registered SDR. *See generally* prior Regulation 43.3(since amended), 17 C.F.R. § 43.3 (2020) (amended 2021). A SEF complied (and still complies) with its real-time public reporting requirements under the Act for swaps that are executed on or pursuant to the rules of the SEF by transmitting transaction and pricing data to an SDR “as soon as technologically practicable” following execution. *See* Regulation 43.3(a)(2), 17 C.F.R. § 43.3(a)(2) (2021) and Regulation 43.3(b)(1), 17 C.F.R. § 43.3(b)(1) (2020) (amended 2021). BGCD violated Section 2(a)(13) of the Act and Regulation 43.3 when it failed to report real-time swap transaction data for thousands of swaps to an SDR during the Relevant Period.

During the Relevant Period, the Regulations also provided, that in the event an error or omission occurs in connection with a prior report of real-time swap transaction data to an SDR, corrected data is to be “promptly” provided to the SDR. *See* prior Regulation 43.3(e)(1) (since amended), 17 C.F.R. § 43.3(e)(1) (2020) (amended 2021). Current Regulation 43.3(e)(1) provides a more precise timeline for corrections, requiring a SEF to “correct any error as soon as technologically practicable after discovery of the error” and that “[i]n all cases, errors shall be corrected within seven business days after discovery.” BGCD did not provide corrected

information to the SDR for weeks and, in one instance, for over a month, after the errors were discovered. BGCD violated Regulation 43.3 by failing to timely correct its reporting to the SDR.

C. BGCD's Conduct Violated SEF Core Principles 9 and 10.

Section 5h of the Act, 7 U.S.C. § 7b-3, creates a regulatory regime for SEFs that is implemented by the Commission's Part 37 Regulations, 17 C.F.R. pt. 37 (2021) (collectively, "SEF Core Principles"). As a condition of registration, SEFs are required to comply with the SEF Core Principles. Section 5h(f)(1) of the Act, 7 U.S.C. § 7b-3(f)(1).

SEF Core Principles 9 and 10 set forth a SEF's reporting and publication obligations. *See* Section 5h(f)(9) & (10) of the Act, 7 U.S.C. § 7b-3(f)(9)-(10). Specifically, SEF Core Principle 9 requires SEFs to "make public timely information on price, trading volume, and other trading data on swaps" as prescribed by the Commission and to have "the capacity to electronically capture and transmit trade information with respect to transactions executed on the facility." Section 5h(f)(9), 7 U.S.C. § 7b-3(f)(9); Regulation 37.900, 17 C.F.R. § 37.900 (2021). The Commission has prescribed that for swaps traded on or through a SEF, a SEF must report the specified swap data required under Part 43 and meet the requirements of Part 16. *See* Regulation 37.901, 17 C.F.R. § 37.901 (2021). Among other things, SEF Core Principle 10 requires that SEFs report to the Commission such information as the Commission determines is necessary or appropriate for the Commission to perform its duties under the Act. *See* Regulation 37.1000, 17 C.F.R. § 37.1000 (2021). BGCD's significant reporting and publication failures and inadequate processes and procedures for reporting swap transactions constitute a violation of these Core Principles.

BGCD experienced fourteen different systems issues that resulted in a failure to report or inaccurate reporting of swaps executed on the SEF to the Commission and/or to the public. More than half of these incidents were not discovered for eight months or more, with two incidents going undetected (and uncorrected) for more than four years. Further, BGCD's persistent and recurring issues with its reporting systems evidence deficiencies in BGCD's capacity to capture and transmit accurate and complete trade information to the public and to the Commission. BGCD was aware that it lacked a process for reconciling its reports with the SEF's trading activity but failed to timely implement a reconciliation process or other policies and procedures to significantly reduce, if not eliminate these reporting and publication errors. Consequently, BGCD violated SEF Core Principles 9 and 10.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, BGCD violated Sections 2(a)(13) and 5h(f)(9)-(10) of the Act, 7 U.S.C. §§ 2(a)(13), 7b-3(f)(9)-(10); and, Regulations 16.01, 37.900, 37.901, 37.1000, and 43.3, 17 C.F.R. §§ 16.01, 37.900, 37.901, 37.1000 (2021), and 43.3 (2020) (amended 2021).

V. OFFER OF SETTLEMENT

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

- A. Acknowledges service of the Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in the Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of the 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, Pub. L. No. 104-121, tit. II, §§ 201-53, 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 BGCD 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 BGCD violated Sections 2(a)(13) and 5h(f)(9)-(10) of the Act, 7 U.S.C. §§ 2(a)(13), 7b-3(f)(9)-(10); and, Regulations 16.01, 37.900, 37.901, 37.1000, and 43.3, 17 C.F.R. §§ 16.01, 37.900, 37.901, 37.1000 (2021), and 43.3 (2020) (amended 2021);
 2. Orders BGCD to cease and desist from violating Sections 2(a)(13) and 5h(f)(9)-(10) of the Act and Regulations 16.01, 37.900, 37.901, 37.1000, and 43.3;
 3. Orders BGCD to pay a civil monetary penalty in the amount of one million nine hundred thousand dollars (\$1,900,000), plus any post-judgment interest; and
 4. Orders BGCD 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:
1. Corrected its reporting to the Commission or SDR, as applicable, and that it has corrected or removed any inaccurate reports published on the SEF website related to these violations; and
 2. Implemented a post-execution reconciliation process for Interest Rate and Credit swaps traded on the SEF that: (1) reconciles on a daily basis all transactions executed on the SEF with all transactions reported under Part 16 and Part 43; and (2) allows BGCD to identify and begin correcting any reporting discrepancies identified by this reconciliation process on no longer than a T+1 basis (“Reconciliation Process”).

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. BGCD shall cease and desist from violating Sections 2(a)(13) and 5h(f)(9)-(10) of the Act, 7 U.S.C. §§ 2(a)(13), 7b-3(f)(9)-(10), and Regulations 16.01, 37.900, 37.901, 37.1000, and 43.3, 17 C.F.R. §§ 16.01, 37.900, 37.901, 37.1000, 43.3 (2021).
- B. BGCD shall pay a civil monetary penalty in the amount of one million nine hundred thousand dollars (\$1,900,000) (“CMP Obligation”), within ten (10) days of the date of the entry of this Order. If the CMP Obligation is not paid in full within

ten (10) days of the date of the entry of this Order, then post-judgment interest shall accrue on the unpaid portion of 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 the entry of this Order pursuant to 28 U.S.C. § 1961.

BGCD 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 transfer, BGCD shall contact Tonia King or her successor at the above email address to receive payment instructions and shall fully comply with those instructions. BGCD shall accompany payment of the CMP Obligation with a cover letter that identifies BGCD and the name and docket number of this proceeding. BGCD 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. BGCD and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: BGCD 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 the Order or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision shall affect BGCD's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. BGCD 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. Remediation and Reporting to the Commission: BGCD represents and agrees that:
 - a. BGCD will establish and maintain, including through any subsequent re-architecture or update of its systems, a Reconciliation Process for

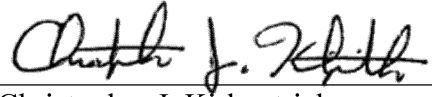
all asset classes of products traded on the SEF and will maintain records of the reconciliations;

- b. Within thirty (30) days of the entry of the Order, BGCD shall develop and implement written processes and procedures related to the Reconciliation Process, which shall include, but not be limited to, processes and procedures for the review, escalation, performance of root cause analyses, and remediation related to any reporting discrepancies;
 - c. BGCD shall cause to be conducted a review of its swaps reporting program for completeness and effectiveness, which review will be performed by an internal audit group of an affiliate company. This review shall be completed and a report (“Internal Audit Report”) provided to BGCD within one hundred and eighty (180) days of the entry of the Order; and
 - d. Three hundred and sixty-five (365) days after the entry of the Order, BGCD shall submit a written report to the Commission, through the Division of Enforcement, reporting on the effectiveness of the Reconciliation Process and BGCD’s compliance with the provisions of the Act and Regulations that are the subject of the Order (the “Report”). The Report should include: (1) a detailed summary of the Reconciliation Process, including any changes or modifications to the process since entry of the Order; (2) a copy of BGCD’s then current written policies and procedures related to the Reconciliation Process; (3) identification of any material non-compliance events related to Part 16 and Part 43 reporting and publication by the SEF since entry of the Order, providing details of each such event (*e.g.* scope, causation, and remediation); (4) a copy of the Internal Audit Report and any other reviews undertaken by BGCD since entry of the Order related to the Reconciliation Process; and (5) a certification by BGCD’s Chief Compliance Officer and BGCD’s Chief Executive Officer that the Report is accurate and complete and that the Reconciliation Process and BGCD’s compliance program are reasonably designed to detect and prevent violations of the Act and Regulations that are the subject of this Order.
3. Partial Satisfaction: BGCD understands and agrees that any acceptance by the Commission of any partial payment of BGCD’s CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to the 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 BGCD satisfies in full its CMP Obligation as set forth in the Order, BGCD shall provide written notice to the

Commission by certified mail of any change to its telephone number and mailing address within ten (10) 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, 2022