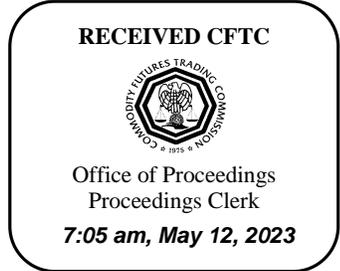


UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION



_____))
In the Matter of:))
))
HSBC Bank USA, N.A.,))
)) **CFTC Docket No. 23-26**
Respondent.))
))
_____))

**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 at various times from in or about March 2012 to July 2020 (“Relevant Period”), HSBC Bank USA, N.A. (“HSBC” or “Respondent”) violated Sections 4c(a)(5)(C), 4s(h)(1)(A), (B) and (D), and 6(c)(1), 7 U.S.C. §§ 6c(a)(5)(C), 6s(h)(1)(A), (B), (D), 9(1), of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1–26, and Regulations 1.31(b)(2), 23.202(a)(1) and (b)(1), 23.410(a)(3) and (c)(1)(ii), 23.433, 23.602, and 180.1(a)(1)-(3), 17 C.F.R. §§ 1.31(b)(2), 23.202(a)(1), (b)(1), 23.410(a)(3), (c)(1)(ii), 23.433, 23.602, 180.1(a)(1)-(3) (2022), 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.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

Between March 2012 and 2015, on multiple occasions, traders at HSBC engaged in and attempted to engage in manipulative and deceptive trading in financial products in connection with interest rate swaps HSBC entered into with bond issuers (“issuer swaps”). The issuer swaps were priced in part based on prices that were displayed on pricing screens controlled by interdealer broker firms. HSBC traders intentionally traded at the broker firms controlling the relevant screens during telephonic pricing calls in which the bond issuances, and the related issuer swaps, were priced, and HSBC traders structured their trading intentionally to move prices for the relevant financial instruments on these screens. HSBC traders engaged in this conduct to increase the profitability of issuer swaps for HSBC, to the detriment of HSBC’s counterparties. Moreover, HSBC traders from time to time deliberately traded at worse prices than they otherwise could have in order to achieve the objective of moving the pricing screens. At times, supervisors and senior management at HSBC or its affiliates knew of, and even directed, HSBC traders to engage in this conduct. This conduct not only constituted manipulation and attempted manipulation, but also violated swap dealer business conduct rules. As a swap dealer, HSBC failed to appropriately supervise this trading.

Further, from September 2015 to April 2016, the trader who supervised HSBC’s U.S. dollar swap desk engaged in spoofing in the voice brokered swaps market on a number of occasions. The trader would provide bids or offers to a voice broker which the trader did not intend to execute; instead, the trader intended to cancel these bids and offers before execution. The trader engaged in this conduct to control prices on the broker’s pricing screen. As a swap dealer, HSBC failed to appropriately supervise this trading.

Finally, from at least March 2020 to July 2020, HSBC failed to make and keep certain audio recordings, as it was required to do as a swap dealer.

In accepting Respondent’s Offer, the Commission recognizes the substantial cooperation of HSBC with 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 Respondent’s substantial cooperation and appropriate remediation is further reflected in the form of a reduced penalty.

B. RESPONDENT

HSBC Bank USA, N.A., is a national banking association headquartered in Tysons, Virginia. HSBC has been provisionally registered with the Commission as a swap dealer since December 31, 2012.

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.

C. FACTS

1. **Manipulation Related to Swaps with Bond Issuers**

Between March 2012 and 2015, on multiple occasions, traders at HSBC² engaged in and attempted to engage in manipulative trading in financial products to benefit HSBC in separate interest rates swaps HSBC or its affiliates entered into with bond issuers. At times, supervisors and senior management at HSBC or its affiliates were aware of this conduct, and one HSBC senior manager (the “HSBC Head of North American Rates”³) directed a trader to engage in manipulative trading.

a. **Background**

During this period, HSBC or its affiliates sometimes played a role in bond issuances. When a bond issuer issues a bond paying a fixed rate of interest, the issuer is exposed to interest rate risk—namely, that prevailing interest rates will rise or fall over the life of the bonds while the issuer’s obligation to pay interest to bond investors remains fixed. To manage this interest rate risk, bond issuers may choose to enter into interest rate swaps near the time of their bond issuances, which help to offset the risk. These interest rate swaps are often referred to as issuer swaps. From time to time, when HSBC or one of its affiliates played a role in a bond issuance, HSBC or the affiliate was also selected by the bond issuer to provide the issuer swap.

Bond issuances and issuer swaps can be priced in a variety of ways. A common way that such transactions are priced is on a pricing call. Typically, representatives from the issuer and banks involved in the bond issuance will participate in the pricing call. During the pricing call individuals—frequently traders—from the bank providing the issuer swap will quote, or “spot,” the current prices of relevant financial instruments. This is often done twice; first during a practice “dry run,” and then immediately again during the “live pricing.” The prices quoted during the live pricing are then used to price the bond issuance and the issuer swap. For the transactions where HSBC provided the issuer swap, relevant financial instruments included U.S. Treasuries, swap spreads,⁴ and basis swaps.⁵

² HSBC and its affiliates no longer employ the traders whose conduct is specifically described in this Order.

³ HSBC and its affiliates no longer employ the HSBC Head of North American Rates; he was employed by HSBC or an affiliate until December 2018.

⁴ A swap spread is a package transaction consisting of a U.S. dollar fixed-for-floating interest rate swap and U.S. treasury securities of the same maturity. The price of a swap spread is expressed as the difference, or spread, in basis points between the U.S. Treasury yield for the relevant maturity and the prevailing market interest rate on the U.S. dollar fixed-for-floating interest rate swap of the same maturity. A basis point is one-one hundredth of one percent; for example, a change in interest rates from 2.25 percent to 2.23 percent is a two-basis point change.

⁵ As relevant here, a basis swap is an interest rate swap where both parties pay floating rates of interest (for example, a swap of the six-month U.S. dollar Libor rate for the three-month U.S. dollar Libor rate). The price of a basis swap is also expressed in basis points.

By agreement, during pricing calls the relevant prices are often quoted from screens published by broker firms, including swap execution facilities. These screens display prices from the relevant broker firm, and trading at the relevant broker firm can affect the prices displayed on the screens.

The prices displayed on the screens, and quoted during the pricing call, could have an impact on how profitable the issuer swaps were for HSBC. HSBC traders were aware of this, and thus, were aware that if they could move the prices for the relevant financial instruments just before the prices were quoted, they could increase the profitability of these transactions for HSBC.

b. HSBC Traders' Manipulative Conduct

Aware of how they could increase the profitability of issuer swaps for HSBC, HSBC traders in fact moved and attempted to move the prices for the relevant financial instruments during pricing calls to benefit HSBC on multiple occasions from March 2012 to 2015. In the transactions relevant here, HSBC generally benefitted if lower prices were displayed on the screens.⁶

When HSBC traders sought to manipulate the prices of financial instruments to benefit HSBC on its swaps with bond issuers, their conduct and trading often followed a similar pattern. First, the traders would listen to the pricing call, to gauge when it would be time for HSBC to quote the price of the relevant financial product. At times, the traders would listen to the pricing call even when they were not going to participate in the call or quote the relevant price themselves. Next, the traders who were listening to the pricing call, either because they needed to quote the relevant price or not, would frequently begin trading shortly before the crucial moment at which HSBC would be asked to quote the price of the relevant financial product. They would conduct this trading at the broker firm whose pricing screen was being used to price the bond issuance and issuer swap, and would avoid trading at other broker firms—even when better prices were available at the other firms. Further, the traders would exhibit particular focus on moving the relevant price at exactly the moment when HSBC quoted the price during the live pricing. Often, the traders would stop trading immediately after the price was quoted and accepted on the pricing call.

HSBC employees openly discussed their manipulative trading in connection with issuer swaps, frequently using plain, blunt language. In one issuer swap transaction, the HSBC Head of North American Rates directed a trader to “push the screen as much as we can before the

⁶ Because manipulating prices to HSBC's benefit made the issuer swaps more profitable to HSBC, one consequence of manipulating, or planning to manipulate, prices during the pricing call was that HSBC would be able to offer the issuer a (seemingly) better price for the issuer swap as the issuer was considering which bank to select to provide the issuer swap. At times, HSBC traders articulated how this worked. One swaps trader (“Swaps Trader 1”) described how, if another bank sold the relevant tenor of swap spreads “ahead of the pricing,” that bank might be able to “push[] the mkt [market] down a little so they could show a ‘mid’ level [i.e., a price for the issuer swap] that was already in the money.” Another trader (“Swaps Trader 2”) noted that “[s]ome guys [at other banks] will indicate tighter to mid [i.e., the price for the issuer swap] because they plan on manipulating screens lower.” Swaps Trader 2 also noted that if another bank “ploughs [] spreads down” the mid-level shown on the screen would be “artificially low.”

pricing”; the HSBC Head of North American Rates also discussed with another senior manager at HSBC “push[ing] the market” for U.S. Treasuries and swap spreads, and connected “how much we can push the market” to the profitability of the issuer swap for HSBC. Traders also described manipulation or potential manipulation using terms such as “hitting spreads down,” “hit[ting] the screen to avoid a los[s],” “hit[ting] the sht [sic] out of it,” “trying to get this screen down,” needing to “move [the] screen,” and “pushing [basis swaps] down.” Both swap and U.S. Treasury traders used the term “ammo” to describe the volume of swaps or U.S. Treasuries they would have available to trade when attempting to move prices of the relevant financial products.

HSBC traders employed a similar manipulative trading pattern across multiple transactions. In one transaction that took place in 2014, the HSBC swaps trader (“Swaps Trader 3”), who was listening to the pricing call, began selling at the relevant broker firm during the dry run. As the critical moment for quoting the relevant rate in the live pricing approached on the call, Swaps Trader 3 directed his broker to “sell a billion,” thus moving the price on the relevant screen down. When Swaps Trader 3 was asked on the pricing call for the quote of the price, he paused just long enough to switch back to his line with his broker to reiterate the broker should “hit ‘em all down,” before providing the lower quote on the pricing call. After the lower level was agreed to on the pricing call, Swaps Trader 3 told his broker he would now be willing to sell at a higher level.

In another transaction from 2014, an HSBC trader (“Swaps Trader 4”) was listening to the pricing call. Swaps Trader 4 began selling basis swaps at the relevant broker firm just before the start of live pricing, and then he momentarily stopped. His broker informed him that if he was “out of the way,” i.e., no longer trading, the broker’s pricing screen would go up. Swaps Trader 4 immediately told the broker to keep selling, thus keeping the price lower until he could quote it a few seconds later on the pricing call. Further, simultaneously with his conversation with his broker, Swaps Trader 4 also sent the broker messages via chat, repeatedly indicating to the broker that the broker should move the pricing screen down.

To advance their manipulative schemes, HSBC traders sometimes traded at worse prices than they otherwise could have traded. In the same transaction from 2014, Swaps Trader 4 moved prices down on the relevant pricing screen by selling basis swaps at the broker firm that controlled that screen at a price of 9.25 basis points, even though at the time he could have sold at another broker firm for the higher price of 9.375. Afterwards, a broker from the second firm asked Swaps Trader 4 why someone would choose to sell at a worse price (9.25 instead of 9.375). Swaps Trader 4 told the broker that it was because “it was a deal pricing” and “people have their reasons.” The broker responded, “Oh. I guess they have to get screens down and what have you?” and Swaps Trader 4 agreed.

Likewise, during a 2015 transaction, Swaps Trader 1 started selling the relevant swap spreads at a price of 12 basis points just as the final part of the pricing call began, moving the relevant screen down from 12.25 to 12 basis points. As Swaps Trader 3 began to quote the price of 12 basis points on the pricing call, the broker told Swaps Trader 1 that Swaps Trader 1 was “being lifted” and therefore he could sell at a higher price. Swaps Trader 1 told the broker he wouldn’t sell at the higher price and he wanted “to hit back down,” in other words, he wanted to continue selling at the lower price instead of the higher price. Consistent with the pattern of

manipulative trading, Swaps Trader 1 stopped trading altogether as soon as the lower price of 12 was confirmed on the pricing call.

HSBC traders also sometimes engaged in non-trading conduct that helped their manipulative schemes. For instance, in a 2014 transaction discussed above, Swaps Trader 3 engaged in manipulative trading in swap spreads to benefit HSBC on the issuer swap, and in addition HSBC's U.S. Treasury trader intentionally quoted a U.S. Treasury price on the pricing call that was simply wrong and had not traded in the market during the pricing call. The price which was quoted was better for HSBC than the price that was actually trading in the market. Afterwards, individuals at HSBC noted that bond purchasers were "complaining" and "[v]ery pissed" about the quote, and that one customer had complained that the fact that a price that had not traded in the market had been quoted was "criminal."

Similar conduct took place in the 2012 transaction in which the HSBC Head of North American Rates directed a trader ("Swaps Trader 5") to "push the screen as much as we can before the pricing." After receiving that direction, Swaps Trader 5 contacted a broker at the relevant firm ahead of time and told the broker that he would "need to move" the broker's screen in connection with an upcoming pricing. During the pricing call in the 2012 transaction, Swaps Trader 5 demanded multiple times that the broker move the screen down, in the direction that would benefit HSBC, and threatened to stop using the broker's firm in the future if the broker did not move the screen. Moreover, although the HSBC Head of North American Rates knew that Swaps Trader 5 was trying to get the broker firm to move the relevant pricing screen, and although he had directed Swaps Trader 5 to "push the screen as much as we can before the pricing," he falsely told the issuer that "Obviously we are not controlling the screen."

c. Supervision

Supervisors and senior managers at HSBC and its affiliates were at times aware of manipulative trading by their employees, and in at least one transaction the HSBC Head of North American Rates directed a trader to engage in manipulative trading.

This is illustrated by the 2012 transaction described above. There, the HSBC Head of North American Rates directed Swaps Trader 5 to "push the screen as much as we can before the pricing," directed Swaps Trader 5 when to begin trading during the pricing call, and was present on the desk while Swaps Trader 5 engaged in manipulative trading as a result of his direction to "push the screen." Further, before the transaction, the HSBC Head of North American Rates discussed openly with another senior manager at HSBC how "push[ing] the market" for U.S. Treasuries and swap spreads could lead to a more profitable issuer swap for HSBC; the second senior manager noted that how much they could push the market depended in part on when the issuer swap was priced.

Despite the fact that senior managers at HSBC were aware of manipulative trading by at least 2012, HSBC traders continued to trade to manipulate and attempt to manipulate prices of financial instruments to benefit HSBC in its swaps with bond issuers through 2015. Senior managers did not report this conduct internally within HSBC, or take steps to end it.

Further, although HSBC traders and executives openly discussed this manipulative trading on HSBC's electronic communications systems (using terms like "push the screen," "ammo," and even the phrase "[s]ome guys [at other banks] will indicate tighter to mid because they plan on manipulating screens lower"), and on HSBC's recorded phone lines, these discussions were not flagged by any type of surveillance of communications at HSBC. Nor was the trading around these transactions flagged by any system of trade surveillance.

Finally, during the period March 2012 through 2015, HSBC did not have a policy that directly addressed whether and under what circumstances it was appropriate for traders to trade ahead of pricings.⁷

2. **Spoofing**

On a number of occasions from September 2015 to April 2016, the supervisor of HSBC's U.S. dollar swap desk (the "USD Swap Desk Head"⁸) engaged in spoofing in the voice brokered swaps market on a swap execution facility ("SEF"). The USD Swap Desk Head would provide bids or offers to a voice broker at the SEF which the trader did not intend to execute. Instead, the USD Swap Desk Head intended to cancel these bids and offers before execution.

The USD Swap Desk Head engaged in this conduct in order to control prices on the pricing screen which reflected prices of swap products available at the SEF. In one conversation with a broker at the SEF, the USD Swap Desk Head told the broker he would use bids and offers to prevent the pricing screen from moving in ways he, the USD Swap Desk Head, disagreed with, telling the broker "I'm going to block it, I'll block it every time." Among themselves, brokers at the SEF referred to certain of the USD Swap Desk Head's bids and offers as "block price[s]."

An example of this conduct occurred in December 2015, when the USD Swap Desk Head placed and cancelled orders in three-year swap spreads on both sides of the market in rapid succession in order to affect the pricing screen, and not because he wished to transact in three-year swap spreads.

To start, the USD Swap Desk Head placed a bid to buy three-year swap spreads. A SEF broker then informed the USD Swap Desk Head that the SEF no longer had an offer to sell three-year swap spreads, so the price of three-year swap spreads would move up on the screen based on the USD Swap Desk Head's bid. On being informed of this, the USD Swap Desk Head immediately withdrew, or cancelled, his bid before it was executed. Cancelling his bid should have prevented the price of three-year swap spreads from moving up on the pricing screen.

⁷ In 2016, HSBC put in place a policy on "pre-hedging," or trading ahead of, certain customer transactions, including issuer swaps. Among other things, the HSBC policy prohibits trading in front of issuer swaps unless the counterparty consents to such trading on the particular trade, the aim of the trading is to "achiev[e] a better outcome" for the counterparty, and the trading is carried out so as so minimize market impact.

⁸ HSBC and its affiliates no longer employ the USD Swap Desk Head.

However, despite the cancellation of the bid, the price for three-year swap spreads moved up. As soon as he heard from the SEF broker that the screen had moved up despite his cancelled bid to buy three-year swap spreads, the USD Swap Desk Head began offering to sell three-year swap spreads. The SEF broker confirmed for the USD Swap Desk Head that his offer “should do it,” that is, should move the pricing screen back down.

A subsequent discussion between the USD Swap Desk Head and the SEF broker explicitly confirmed that the USD Swap Desk Head had not wanted to sell three-year swap spreads, but had only wanted to affect the prices shown on the pricing screen. In the discussion, the SEF broker told the USD Swap Desk Head there was a new bid to buy three-year swap spreads at the same price that the USD Swap Desk Head supposedly wanted to sell them. Rather than trying to facilitate the trade, however, the SEF broker told the USD Swap Desk Head that he would withdraw the USD Swap Desk Head’s offer because he “assume[d]” the USD Swap Desk Head “didn’t want to” sell three-year swap spreads. The USD Swap Desk Head confirmed that he in fact did not want to sell three-year swap spreads, saying he “wasn’t really being an offer.” The SEF broker indicated to the USD Swap Desk Head that he understood that, and further told the USD Swap Desk Head that he “knew I could get you in there and not get you lifted,” that is, that the SEF broker knew he could make sure that the USD Swap Desk Head’s offer to sell was not executed.

The USD Swap Desk Head engaged in this type of spoofing conduct, in his capacity as an employee of HSBC, on a number of occasions over a period of more than six months.

In the spring of 2016, the SEF inquired of HSBC about certain trading activity of the USD Swap Desk Head on four days. This inquiry put HSBC on notice that the USD Swap Desk Head may have engaged in trading like the spoofing conduct described above. HSBC responded to the SEF’s inquiry, provided the SEF what the SEF requested, and engaged with the SEF regarding the nature of the inquiry, but did not conduct a broader investigation to understand the full extent of the USD Swap Desk Head’s conduct. HSBC did not attempt to determine how long the conduct lasted or on how many occasions the USD Swap Desk Head engaged in spoofing, and did not conduct a wider review of the USD Swap Desk Head’s communications with brokers at the SEF. Further, the USD Swap Desk Head did not face any disciplinary consequences for the conduct. Instead, HSBC has represented that, as a result of the SEF inquiry, another supervisor merely advised the USD Swap Desk Head to be more careful and precise about the language the USD Swap Desk Head used. HSBC has also represented that, following the spring of 2016, it conducted training and enhanced policies making clear that spoofing was prohibited, including in the voice brokered swaps market.

3. Audio Recordkeeping

To comply with its recordkeeping obligations as a swap dealer under Part 23 of the Regulations, 17 C.F.R. pt. 23 (2022), and in particular its obligations to make and keep recordings of certain oral communications concerning trading in swaps and related cash and forward transactions pursuant to Regulations 1.31(b)(2), 23.202(a)(1) and (b)(1), 17 C.F.R. §§ 1.31(b)(2), 23.202(a)(1), (b)(1) (2022), HSBC records the phone calls of individuals who may

be expected to engage in such communications. This includes recording phone calls made on mobile devices.

Since 2014, HSBC has recorded calls made on mobile devices by using the services of a vendor. The vendor's service worked by allowing calls made on a mobile device to be recorded using the same recording hardware that HSBC used for recording calls made in its offices. HSBC used the vendor's service primarily to record phone calls of traders in the Global Banking and Markets division.

The version of the vendor's system that HSBC used relied on recording architecture which compromised the ability of the vendor's system to reliably record mobile audio. While the flaw in the vendor's recording architecture had existed prior to 2020, increased use of the system in the spring of 2020 apparently exacerbated the pre-existing flaw in the recording architecture.⁹ From at least March 2020 to July 2020, the vendor's service failed to fully record certain HSBC mobile phone calls. Although calls would begin to be recorded, the recordings would drop partway through a call. This recording issue affected mobile calls on a random basis. The recording failures impacted approximately one percent of mobile phone calls during March 2020 to May 2020. Because HSBC had used the vendor's services with the same recording architecture prior to the spring of 2020, it is possible that the flaw in the architecture led to the same failure to record calls prior to that period.

HSBC discovered there was a recording issue in March 2020 when, in the course of audio surveillance, compliance found that phone calls were not fully captured on recorded audio. After discovering there was an issue, HSBC worked to understand the cause and scope of the issue, and once it understood the issue, HSBC sought to remediate the issue by, among other things, accelerating a migration to a new recording architecture used by the vendor, which was completed by July 2020.

Although HSBC became aware there was an issue with recordings in March 2020, HSBC did not create any alternative written records of the phone calls which were required to be, but which were not in fact, recorded.

4. Cooperation

HSBC provided substantial cooperation in the Division's investigation. In particular, after HSBC became aware of the investigation, HSBC, on its own initiative, undertook a review of certain additional swaps with bond issuers that were not yet a subject of the Division's investigation. Further, throughout the investigation, HSBC drew the Division's attention to materials, such as electronic communications and audio recordings, that might be relevant to the Division's investigation, including materials of which HSBC was aware but which were not responsive to any outstanding Division request or subpoena. Moreover, HSBC undertook additional fact-finding related to many of the materials it had drawn to the Division's attention and reported the results of these efforts to the Division. HSBC also looked for, and facilitated the production to the CFTC of, information and documents located with affiliates of HSBC

⁹ In the spring of 2020, the use of the vendor's service at HSBC and its global affiliates increased from a few hundred hours per week of recorded mobile phone calls to approximately 10,000 hours per week.

overseas. In addition, HSBC has represented to the Division that it has undertaken certain remedial measures to prevent the recurrence of the type of conduct addressed in the Order.

III. LEGAL DISCUSSION

A. Manipulation Related to Swaps with Bond Issuers

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.” In turn Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2022), makes it “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.”

The Act also requires that swap dealers “conform with such business conduct standards as prescribed in [in the Act] and as may be prescribed by the Commission by rule or regulation that relate to . . . fraud, manipulation, and other abusive practices involving swaps . . . [and] such other matters as the Commission determines to be appropriate.” Section 4s(h)(1)(A) and (D), 7 U.S.C. § 6s(h)(1)(A), (D).

Among other business conduct standards prescribed by the Act and the Commission’s regulations, swap dealers shall not “engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.” Regulation 23.410(a)(3), 17 C.F.R. § 23.410(a)(3) (2022). Further, it is unlawful for any swap dealer to “[u]se for its own purposes in any way that would tend to be materially adverse to the interests of a counterparty, any material confidential information provided by or on behalf of a counterparty to the swap dealer.” Regulation 23.410(c)(1)(ii), 17 C.F.R. § 23.410(c)(1)(ii) (2022). Swap dealers are also required to communicate with counterparties “in a fair and balanced manner based on principles of fair dealing and good faith.” Regulation 23.433, 17 C.F.R. § 23.433 (2022).

From March 2012 to 2015, in connection with swap spreads, basis swaps, and its swaps with bond issuers, HSBC violated Section 6(c)(1) and Regulation 180.1(a)(1)-(3) when its traders engaged in and attempted to engage in manipulative trading in financial products to benefit HSBC in those issuer swaps. HSBC’s traders engaged in the trading described above with the intent to move prices of financial products that were displayed on pricing screens that could be accessed by both bond issuers and other market participants. HSBC traders engaged in this trading in order to benefit HSBC on issuer swaps, to the detriment of HSBC’s issuer counterparties. Further, in instances where HSBC traders engaged and attempted to engage in manipulation, HSBC traders generally timed their trading to affect prices close in time to the moment that the price was quoted in the pricing call, and often stopped trading as soon as the issuer swap had been priced. This trading deceived both HSBC’s counterparties and other

market participants, as neither HSBC's bond issuer counterparties nor other market participants were aware that HSBC was engaging in this conduct and that the relevant prices displayed on the pricing screens were a result of HSBC's manipulative trading. By engaging in this trading, HSBC traders violated Section 6(c)(1) and Regulation 180.1(a)(1)-(3).

Further, since HSBC has been registered as a swap dealer, this conduct also violated Section 4s(h)(1)(A) and (D) of the Act and Regulations 23.410(a)(3) and (c)(1)(ii) and 23.433. HSBC's manipulative trading in connection with bond issuances constituted an act, practice, or course of business that was deceptive and manipulative. Further, in trading in such a way as to move market prices in a direction that was better for HSBC and worse for its counterparties during pricing calls, HSBC used its counterparties' material confidential information about the timing and pricing of issuer swaps in a way that was materially adverse to the interests of its counterparties. Finally, because HSBC communicated with counterparties about issuer swaps without disclosing to counterparties that its traders would trade, or had traded, to move prices in a direction that favored HSBC and disadvantaged the counterparties, HSBC did not communicate with its counterparties in a fair and balanced manner based on principles of fair dealing and good faith.

B. Spoofing

Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C), makes it unlawful for "[a]ny person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that . . . is, is of the character of, or is commonly known to the trade as, 'spoofing' (bidding or offering with the intent to cancel the bid or offer before execution)." *See, e.g., United States v. Coscia*, 866 F.3d 782, 792-93 (7th Cir. 2017) (holding that because the Act clearly defines spoofing, it provides adequate notice of prohibited conduct), *cert. denied*, 138 S. Ct. 1989 (2018).

As described above, from September 2015 to April 2016, Respondent, by and through the acts of the USD Swap Desk Head, placed bids and offers for swap products on a SEF, a registered entity, with the intent to cancel those bids and offers before they were executed. By engaging in this conduct, Respondent violated Section 4c(a)(5)(C) of the Act. *See CFTC v. Oystacher*, 203 F. Supp. 3d 934, 942 (N.D. Ill. 2016) (denying motion for judgment on the pleadings, holding that allegations of placing "both bids and offers with the intent to cancel those bids or offers before execution" constitutes "trading behavior [that] falls within the Spoofing Statute's defined prohibition"); *see also* Section 1a(40)(D), 7 U.S.C. § 1a(40)(D) (defining "registered entity" to include a SEF).

C. Supervision

Section 4s(h)(1)(B) of the Act requires "diligent supervision of the business of the registered swap dealer." 7 U.S.C. § 6s(h)(1)(B). Regulation 23.602 requires that each swap dealer "shall 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)." 17 C.F.R. § 23.602 (2022).

Under Regulation 23.602, a violation is demonstrated by showing either that: (1) the registrant's supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. See *In re Commerzbank AG*, CFTC No. 19-03, 2018 WL 5921385, at *10-11 (Nov. 8, 2018) (consent order) (noting textual similarities between Regulation 23.602 and Regulation 166.3, applying case law concerning Regulation 166.3, and citing *In re Murlas Commodities, Inc.*, CFTC No. 85-29, 1995 WL 523563, at *9 (Sept. 1, 1995), and *In re Paragon Futures Assoc.*, CFTC No. 88-18, 1992 WL 74261, at *14 (Apr. 1, 1992)); *In re INTL FCStone Markets, LLC*, CFTC No. 15-27, 2015 WL 4980321, at *3 (Aug. 19, 2015) (same). 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*, 1992 WL 74261, at *14.

From the time it was provisionally registered as a swap dealer until 2015, HSBC failed to diligently supervise, or establish and maintain a system to supervise, the conduct of its traders in connection with swaps with bond issuers. Neither the trading itself nor the discussions of manipulation on HSBC's electronic communications systems and recorded phone lines were flagged by any surveillance system, nor were the trading or communications in any transaction the subject of any contemporaneous inquiry or investigation conducted by HSBC. This is the case even though senior HSBC managers were aware of the conduct of traders in certain transactions. Further, despite this awareness, no senior HSBC manager reported or sought to end the conduct. Instead, some condoned—or even directed and encouraged—the conduct. Indeed, the HSBC Head of North American Rates was a senior manager who was an integral part of HSBC's supervisory structure, and not only was he aware of the misconduct, but he actually directed and participated in it. No individuals associated with HSBC faced disciplinary action by HSBC for this conduct.

Further, from September 2015 to April 2016, HSBC failed to diligently supervise, or establish and maintain a system to supervise, the conduct of the USD Swap Desk Head in the voice brokered swap market. During this period, the USD Swap Desk Head engaged in spoofing on multiple occasions, and discussed this spoofing with individuals at the SEF, but neither the market activity nor the communications were flagged by any surveillance system. Further, when HSBC was alerted by the SEF's inquiry to the fact that the USD Swap Desk Head may have engaged in spoofing, HSBC did not conduct a broader review to determine the full extent of the USD Swap Desk Head's conduct, such as how long the conduct lasted or on how many occasions the USD Swap Desk Head engaged in spoofing. Additionally, the USD Swap Desk Head did not face any disciplinary consequences for the conduct.

D. Audio Recordkeeping

Regulation 23.202(a)(1) and (b)(1), 17 C.F.R. § 23.202(a)(1), (b)(1) (2022), requires, in relevant part, every swap dealer to keep daily trading records of all swaps and related cash and forward transactions it executes, including, specifically a record of all oral communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that led to the execution of a swap transaction or the conclusion of a related cash or forward transaction. Regulation 1.31(b)(2), 17 C.F.R. § 1.31(b)(2) (2022), specifies that such recordings must be kept for a period of one year. From at least March 2020 to July 2020, HSBC,

due to a recording failure, did not make and keep required recordings of mobile phone calls that contained the oral communications that led to the execution of swaps and related cash and forward transactions. These failures violated Regulations 23.202(a)(1) and (b)(1) and 23.203(b)(2).¹⁰

E. HSBC is Liable for the Acts of its Agents

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2022), provide that “[t]he act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust.” Pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2, strict liability is imposed on principals for the actions of their agents. *See, e.g., Rosenthal & Co. v. CFTC*, 802 F.2d 963 966 (7th Cir. 1986); *CFTC v. Byrnes*, 58 F. Supp. 3d 319, 324 (S.D.N.Y. 2014).

Because the traders who engaged in the manipulation and spoofing conduct described above engaged in that conduct within the scope of their employment with HSBC, HSBC is liable for their violations of Sections 4c(a)(5)(C) and 6(c)(1) of the Act, 7 U.S.C. §§ 6c(a)(5)(C), 9(1), and Regulation 180.1(a)(1)-(3).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, **HSBC Bank USA, N.A.** violated Sections 4c(a)(5)(C), 4s(h)(1)(A), (B) and (D), and 6(c)(1) of the Act, 7 U.S.C. §§ 6c(a)(5)(C), 6s(h)(1)(A), (B), (D), 9(1), and Regulations 1.31(b)(2), 23.202(a)(1) and (b)(1), 23.410(a)(3) and (c)(1)(ii), 23.433, 23.602, and 180.1(a)(1)-(3), 17 C.F.R. §§ 1.31(b)(2), 23.202(a)(1), (b)(1), 23.410(a)(3), (c)(1)(ii), 23.433, 23.602, 180.1(a)(1)-(3) (2022).

V. OFFER OF SETTLEMENT

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

¹⁰ On March 17, 2020, the Division of Swap Dealer and Intermediary Oversight (“DSIO,” now renamed the Market Participant Division) issued a “no-action” letter to swap dealers. CFTC No-Action Letter CFTCLTR No. 20-06, 2020 WL 1934684, *No-Action Positions for Swap Dealers to Facilitate Physical Separation of Personnel in Response to the COVID-19 Pandemic* (Mar. 17, 2020). In relevant part, the no-action letter provided that, until June 30, 2020, DSIO would not recommend that the Commission bring an enforcement action against a swap dealer for failing to comply with audio recording requirements in certain circumstances, provided that the swap dealer met certain conditions. One such condition was that the swap dealer create and maintain a “written record of the oral communication, including date, time, identifying information of the persons participating, and subject matter of the communication.” *Id.* at *1. Because HSBC did not create alternative written records of the missing phone calls even though it became aware of the recording failure in March 2020, HSBC does not qualify for this no-action relief for missing recordings from March 17, 2020 to July 2020. Further, to the extent that the recording failure resulted in HSBC’s failure to record audio that was required to be recorded between 2014 and March 17, 2020, the no-action letter would not be applicable.

- 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, 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 (2022), 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 Respondent has consented in the Offer;
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
 - 1. Makes findings by the Commission that Respondent violated Sections 4c(a)(5)(C), 4s(h)(1)(A), (B) and (D), and 6(c)(1) of the Act, 7 U.S.C. §§ 6c(a)(5)(C), 6s(h)(1)(A), (B), (D), 9(1), and Regulations 1.31(b)(2), 23.202(a)(1) and (b)(1), 23.410(a)(3) and (c)(1)(ii), 23.433, 23.602, and 180.1(a)(1)-(3), 17 C.F.R. §§ 1.31(b)(2), 23.202(a)(1), (b)(1), 23.410(a)(3), (c)(1)(ii), 23.433, 23.602, 180.1(a)(1)-(3) (2022);
 - 2. Orders Respondent and its successors and assigns to cease and desist from violating Regulations Sections 4c(a)(5)(C), 4s(h)(1)(A), (B) and (D), and 6(c)(1),

and Regulations 1.31(b)(2), 23.202(a)(1) and (b)(1), 23.410(a)(3) and (c)(1)(ii), 23.433, 23.602, and 180.1(a)(1)-(3);

3. Orders Respondent to pay a civil monetary penalty in the amount of forty-five million dollars (\$45,000,000), 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.

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 Regulations Sections 4c(a)(5)(C), 4s(h)(1)(A), (B) and (D), and 6(c)(1), 7 U.S.C. §§ 6c(a)(5)(C), 6s(h)(1)(A), (B), (D), 9(1), and Regulations 1.31(b)(2), 23.202(a)(1) and (b)(1), 23.410(a)(3) and (c)(1)(ii), 23.433, 23.602, and 180.1(a)(1)-(3), 17 C.F.R. §§ 1.31(b)(2), 23.202(a)(1), (b)(1), 23.410(a)(3), (c)(1)(ii), 23.433, 23.602, 180.1(a)(1)-(3) (2022).
- B. Respondent shall pay a civil monetary penalty in the amount of forty-five million U.S. dollars (\$45,000,000) (“CMP Obligation”) within fourteen days of the entry of this Order. If the CMP Obligation is not paid in full within fourteen days of the entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

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
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 731699-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Tonia King or her successor at the above email 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 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. Remedial Undertakings:
 - a. Respondent represents that it has already undertaken and continues to undertake extensive remedial measures to implement and strengthen its internal controls and procedures relating to its fixed income business, including the following:
 - i. HSBC has conducted a global, multi-year remediation program with respect to its fixed income business designed to enhance its governance and control framework.
 - ii. HSBC issued enhanced, global policies and guidance on topics such as material order handling, pre-hedging, and spoofing.
 - iii. HSBC improved its internal governance framework in order to formalize HSBC's conduct escalation process and ensure that HSBC management identifies and manages potential employee misconduct.
 - iv. HSBC strengthened its mandatory training requirements for all fixed income employees, as well as enhanced its training modules to include topics such as managing potential or actual conflicts of interest, pre-hedging, and spoofing.

- v. HSBC strengthened its existing surveillance tools for electronic and voice communications, as well as its trade surveillance tools designed to identify concerning trading such as potential spoofing.
- vi. In 2017, HSBC revised its client Fixed Income Terms of Dealing to specifically address potential conflicts of interest.

b. Further, HSBC undertakes that it will:

- i. Create a method of tracking the responses received from clients to requests for consents to pre-hedging under the pre-hedging policy; and
- ii. Require documentation in writing of why such pre-hedging is believed to benefit the client, and create a method of tracking such documentation.

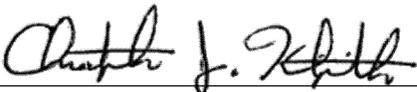
3. Cooperation with the Commission: Respondent shall cooperate fully and expeditiously with the Commission, including the Division, in this action and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate with the Commission in any investigation, civil litigation, or administrative proceeding related to, or arising from, the subject matter of this proceeding. Respondent's cooperation shall continue for a period of five years from the date of entry of this Order. As part of such cooperation, Respondent agrees to:

- a. Preserve and produce to the Commission in a responsive and prompt manner, as requested by Division staff, all non-privileged documents, information, and other materials wherever located, including, but not limited to, audio files, electronic communications, and trading records and data, in the possession, custody, or control of Respondent;
- b. Comply fully, promptly, completely, and truthfully, subject to any legally recognized privilege, with any inquiries or requests for information or documents by the Commission;
- c. Identify and authenticate relevant documents and other evidentiary materials, execute affidavits or declarations, and provide a corporate representative to testify completely and truthfully at depositions, trial, and other judicial proceedings, when requested to do so by Division staff;

- d. Use its best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of Respondent, regardless of the individual's location and at such a location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including, but not limited to, requests for testimony, depositions, or interviews, and to encourage them to testify completely and truthfully in any such trial, proceeding, or investigation; and
 - e. Subject to applicable laws and regulations, use their best efforts to assist in locating and contacting any prior (as of the time of the request) officer, director, employee, or agent of Respondent.
4. 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.
5. 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 (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: May 12, 2023