

**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**

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**In the Matter of:** )  
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**Commerzbank AG,** )  
 ) **CFTC Docket No. 19-03**  
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 **Respondent.** )  
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**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 from December 31, 2012 until at least 2018 (the “Relevant Period”), Commerzbank AG (“Commerzbank,” “Respondent,” or the “Bank”) violated Sections 2(a)(13)(G), 2(h)(8), 4s(f)(1)(A), 4s(h)(1)(B), and 6(c)(2) of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 2(a)(13)(G), 2(h)(8), 6s(f)(1)(A), 6s(h)(1)(B), 9(2) (2012), and Regulations 20.4, 20.7, 23.402(b), 23.602, 37.9, 43.3, and 45.3, 17 C.F.R. §§ 20.4, 20.7, 23.402(b), 23.602, 37.9, 43.3, 45.3 (2018) 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.<sup>1</sup>

<sup>1</sup> 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

From December 31, 2012, when Commerzbank provisionally registered with the Commission as a swap dealer (“SD”), until at least 2018, Commerzbank management routinely failed to supervise its SD’s activities, in violation of Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B) (2012), and Regulation 23.602, 17 C.F.R. § 23.602 (2018). Commerzbank’s failure to supervise the operations of its SD resulted in thousands of violations of the Act. Even after Commerzbank management became aware of the Commission’s investigation of its SD, it did not effectively address many of the SD’s compliance issues. In June 2018, a Commerzbank internal audit report concluded that the Bank’s processes for swap reporting were still “not satisfactory” due to “a number of deficiencies across the risk and control management framework.”

During the Relevant Period, Commerzbank was not transparent with the Commission regarding the compliance inadequacies at the SD. In 2015 and 2016, Commerzbank filed misleading reports with the Commission that omitted material facts regarding the state of compliance at the SD. The misleading statements and material omissions in these reports violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012).

As a result of Commerzbank management’s failure to adequately supervise the SD, during the Relevant Period, Commerzbank violated numerous provisions of the Act and accompanying Regulations. These violations included failure to implement policies reasonably designed to determine whether swap transactions with certain non-U.S. swap counterparties were subject to the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”), in violation of Regulation 23.402(b), 17 C.F.R. § 23.402(b) (2018); failure to report swap transactions to swap data repositories (“SDRs”) in violation of Section 2(a)(13)(G) of the Act, 7 U.S.C. § 2(a)(13)(G) (2012), Regulations 43.3 and 45.3, 17 C.F.R. §§ 43.3, 45.3 (2018); failure to submit Large Trader Reports to the Commission consistent with the requirements of Section 4s(f) of the Act and Regulations 20.4 and 20.7, 17 C.F.R. §§ 20.4 and 20.7 (2018); and failure to execute swaps on swap execution facilities (“SEFs”) in violation of Section 2(h)(8) of the Act, 7 U.S.C. § 2(h)(8) (2012), and Regulation 37.9, 17 C.F.R. § 37.9 (2018).

### B. RESPONDENT

Commerzbank AG is headquartered in Germany and has been provisionally registered with the Commission as an SD since December 31, 2012.

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other proceeding brought by the Commission or to which the Commission is a party, 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.

## C. FACTS

### 1. **Commerzbank's Inadequate Supervision of Its Swap Dealer**

During the Relevant Period, Commerzbank management routinely failed to supervise its SD's activities, in violation of Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B) (2012), and Regulation 23.602, 17 C.F.R. § 23.602 (2018). Personnel in Commerzbank's New York office were tasked with overseeing SD compliance, but did not have the authority, the funding, or the necessary information to effectively implement bank-wide policies and controls for swap transactions.

During much of the Relevant Period, Commerzbank did not adopt any effective bank-wide process for identifying all swap transactions that were subject to Dodd-Frank requirements, including reporting requirements. *See* Section 2(a)(13)(G) of the Act, 7 U.S.C. § 2(a)(13)(G) (2012), and Regulations 43.3 and 45.3, 17 C.F.R. §§ 43.3, 45.3 (2018); Section 4s(f)(1)(A) of the Act, 7 U.S.C. § 6s(f)(1)(A), and Regulations 20.4 and 20.7, 17 C.F.R. §§ 20.4 and 20.7 (2018). Because Commerzbank had no effective, bank-wide process to determine whether its swap transactions with certain non-U.S. persons were subject to Dodd-Frank requirements, it did not comply with legal requirements applicable to these transactions. *See* Section 2(a)(13)(G) and Regulations 43.3 and 45.3. Today, nearly two years after Commerzbank became aware that the Commission was investigating its SD, the Bank still has not determined whether or not transactions with thousands of its non-U.S. swap counterparties are subject to applicable Dodd-Frank legal requirements.<sup>2</sup>

Commerzbank also did not implement effective processes and controls around swap reporting. SDs are required to report certain swap transactions to the Commission and also to SDRs. During the Relevant Period, Commerzbank management did not establish processes sufficient to comply with these reporting requirements. Commerzbank management was on notice of the weaknesses in the Bank's systems for reporting at least by May 2014 when a "Big Four" accounting firm that had been retained by Commerzbank as an external compliance consultant reported to the Bank the findings of its review of compliance at the SD. This external compliance consultant identified, and flagged for Commerzbank management, numerous high-risk gaps in the Bank's policies and processes for SD reporting and recordkeeping. Over the next four years, Commerzbank management made efforts to address these deficiencies in the Bank's systems and controls that in many instances were ineffective. Accordingly, in June 2018, four years after the external compliance consultant identified numerous weaknesses in Commerzbank's policies and processes for swap reporting, the Commerzbank internal auditor concluded that the Bank's processes for swap reporting were still "not satisfactory" due to "a number of deficiencies across the risk and control management framework." The internal

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<sup>2</sup> In 2013, the Commission issued non-binding guidance setting forth factors that may be relevant to this determination. *See* Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 Fed. Reg. 45,292 (July 26, 2013) ("Cross-Border Guidance"). Commerzbank failed to obtain from swap counterparties the information that it would have needed to apply these factors or otherwise assess the applicability of Dodd-Frank requirements to its swap transactions with non-U.S. persons.

auditor also found that Commerzbank’s attempts to address other deficiencies in the SD’s processes and controls had been inadequate.

During the Relevant Period, Commerzbank also did not effectively ensure that its swap transactions were executed on SEFs as required by Dodd-Frank. *See* Section 2(h)(8) of the Act, 7 U.S.C. § 2(h)(8) (2012), and Regulation 37.9(a)(2), 17 C.F.R. § 37.9(a)(2) (2018). Commerzbank management was on notice of deficiencies in its processes and controls around SEF execution by at least May 2014 when its external compliance consultant identified multiple, specific gaps in Commerzbank’s processes and controls relating to SEF execution. Over the next four years, Commerzbank’s management did not effectively address these issues and, in June 2018, a Commerzbank internal audit report concluded that Commerzbank’s internal gap analysis was insufficient to confirm Dodd-Frank compliance with respect to SEF execution.

## **2. Commerzbank’s Misleading Statements and Material Omissions in Its Chief Compliance Officer Reports to the Commission**

### **a. Misleading Chief Compliance Officer Reports**

SDs provisionally registered with the Commission normally submit an annual Chief Compliance Officer report (“CCO report”) discussing the SD’s operations and compliance with the Act in the preceding calendar year.

Commerzbank submitted a CCO report for the 2014 calendar year on or about April 29, 2015 (the “2014 Report”) and a CCO report for the 2015 calendar year on or about April 28, 2016 (the “2015 Report,” together with 2014 Report, the “CCO Reports”).<sup>3</sup> The CCO Reports did not adequately disclose to the Commission the numerous deficiencies in Commerzbank’s systems and controls for SD compliance. Specifically, the CCO Reports, both of which were signed by a senior Commerzbank compliance officer, falsely imply that Commerzbank had sufficient systems and controls to generally ensure effective compliance with the Act and accompanying regulations. This depiction of the state of affairs at the Commerzbank SD was generally misleading regarding the overall state of compliance at the Commerzbank SD.

Moreover, not only were the CCO Reports generally misleading, but they also contained specific statements of material fact that were misleading, and omitted material facts regarding compliance issues that were known internally at Commerzbank before the reports were submitted to the Commission (which, in turn, made other statements in the reports misleading). Senior Commerzbank compliance personnel knew about these compliance issues, but decided not to discuss them in the CCO Reports. Commerzbank’s misleading statements and omissions violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012).

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<sup>3</sup> These CCO reports to the Commission contained material specific to the swap dealer’s Dodd-Frank compliance and were submitted along with an overarching bank-wide report on compliance. The misleading statements and material omissions discussed in this order relate to the material that was specific to the swap dealer’s Dodd-Frank compliance.

**b. Misleading Statements and Material Omissions Regarding an External Compliance Consultant's Findings of Compliance Gaps at the Swap Dealer**

In 2014, Commerzbank hired a "Big Four" accounting firm to conduct an eight-week long review of Dodd-Frank compliance at the Commerzbank SD. This external compliance consultant's findings were memorialized in May 2014, and circulated contemporaneously within Commerzbank.

The external compliance consultant found fifty regulatory gaps and twenty-two business gaps in the SD's policies and processes for Dodd-Frank compliance. The external compliance consultant concluded that thirty-six of these gaps were "high impact," meaning that they had a significant impact leading to non-compliance with the applicable Dodd-Frank requirement. Another thirty-five gaps were deemed "medium impact," meaning that they could potentially lead to non-compliance with Dodd-Frank.

Some of the specific compliance gaps identified by the external compliance consultant included: (1) lack of controls to verify the accuracy of swap data submitted to SDRs; (2) lack of system capabilities to perform storage and archiving of swap data per Commission requirements; (3) lack of controls to verify data regarding swap counterparties; (4) lack of controls to monitor abusive and manipulative trading practices; (5) no controls to prevent traders from executing, off-SEF, "Made Available to Trade" ("MAT") swaps that are legally required to be executed on-SEF; (6) lack of controls to ensure compliance with mandatory clearing requirements; (7) lack of understanding and knowledge regarding the end-user exception to mandatory clearing; and (8) no supervision and monitoring tools to check whether required material information is disclosed to swap counterparties.

In early 2015, Commerzbank drafted its CCO report to the Commission for the 2014 calendar year. During the drafting process, Commerzbank personnel discussed whether to include the external compliance consultant's findings in the 2014 Report. A Commerzbank employee in Frankfurt initially recommended disclosing the external compliance consultant's findings. However, Commerzbank compliance personnel in New York argued against this, and their view prevailed.

Accordingly, on or about April 29, 2015, Commerzbank submitted the 2014 Report to the Commission. Without mentioning the external compliance consultant, the 2014 Report stated that between March and May of 2014 Commerzbank had conducted an eight-week long review of SD Dodd-Frank compliance. The 2014 Report did not disclose the external compliance consultant's findings regarding seventy-two compliance gaps at the SD. This omission was material and, by submitting the 2014 Report to the Commission without disclosing these findings, Commerzbank omitted material facts that were necessary to make the 2014 Report's discussion of the external compliance consultant's SD review, as well as other statements in the 2014 Report, not misleading in material respects.

Additionally, Commerzbank made specific statements in the 2014 Report that were misleading in light of the external compliance consultant's findings. For instance, Commerzbank stated that its policies and procedures for Regulation 43.3, 17 C.F.R. § 43.3 (2018), which govern reporting to SDRs, were "effective," and specifically asserted that the firm had adequate written policies and procedures to ensure that swap transactions and pricing data were reported in real-time. The external compliance consultant, however, found in May 2014 that Commerzbank's Regulation 43.3 reporting infrastructure lacked controls to verify the accuracy of data submitted to SDRs, and also lacked controls to verify that the data was submitted within the timeframe required by the Commission. Commerzbank did not include these findings in its 2014 Report. These omissions were both material and misleading.

Commerzbank also stated in the 2014 Report that its written policies and procedures for compliance with Regulation 45.2, 17 C.F.R. § 45.2 (2018), the Commission rule pertaining to SD recordkeeping, were "effective." The external compliance consultant, however, had reached the opposite conclusion, finding that, in total, there were four high-impact gaps and one medium-impact gap in Commerzbank's procedures for Regulation 45.2 compliance. According to the external compliance consultant, Commerzbank did not have detailed procedures for record retention and retrieval as required by Regulation 45.2. The external compliance consultant also found that Commerzbank lacked system capabilities to perform storage and archiving per Commission requirements, did not have controls in place to verify data entered when swap counterparties were onboarded, and lacked ownership of and controls over the recordkeeping process. Commerzbank did not disclose any of these findings in the 2014 Report. These omissions were material, and Commerzbank's statement to the Commission regarding the supposed effectiveness of its policies and procedures for Regulation 45.2 compliance was, at best, misleading.

Moreover, Commerzbank's 2014 Report stated that its written policies and procedures were effective to prevent evasion of the Commission's mandatory clearing requirements. The external compliance consultant, however, had reached a different conclusion, finding multiple gaps in Commerzbank's controls to ensure mandatory clearing. Commerzbank did not disclose these findings in its 2014 Report and, instead, stated inaccurately that its written policies and procedures for ensuring compliance with clearing requirements were "effective." This statement was material and misleading.

Accordingly, Commerzbank violated Section 6(c)(2) of the Act.

**c. Material Omissions Pertaining to Part 20 Large Trader Reporting at the Swap Dealer**

In March 2015, a Commerzbank computer specialist flagged internally several problems with Commerzbank's Part 20 Large Trader reporting to the Commission. In an email chain that was circulated widely throughout Commerzbank, including to senior SD compliance personnel, the computer specialist stated that for a period of 327 days from 2013 to 2014, Commerzbank had made Part 20 submissions that did not comply with Commission requirements. After self-identifying this issue, Commerzbank corrected the reporting problem going forward. The

computer specialist also flagged two other Part 20 reporting problems. Specifically, he stated that on two days, April 23, 2013, and April 1, 2014, Commerzbank did not make any Part 20 submissions whatsoever, and that, since 2013, Commerzbank had not aggregated its Part 20 submissions consistent with Commission requirements. The computer specialist further observed that he had repeatedly flagged the aggregation problem previously. In March 2015, Commerzbank resubmitted 325 days of data to the Commission to correct the first of these problems, but it did not even attempt to remediate the other two problems until well after the Division began to investigate the Commerzbank SD.

All three of these Part 20 reporting problems (the one that was remediated in 2015 and the two that were not remediated until much later) were omitted from the 2014 Report that Commerzbank filed with the Commission on April 29, 2015, even though SD compliance personnel, including personnel responsible for drafting the 2014 Report, were notified of these problems in March 2015.

In early 2016, these Part 20 reporting violations were again brought to the attention of SD compliance personnel. A new hire in the SD's compliance department, who had started working at Commerzbank in February 2016 as a Markets Compliance officer, found the computer specialist's email chain in the course of preparing the 2015 Report to the Commission. She promptly emailed her supervisor, a senior compliance officer in New York, and recommended in April 2016 that the Bank disclose these Part 20 violations to the Commission. Despite this recommendation, Commerzbank did not disclose these Part 20 violations in the 2015 Report, which was submitted to the Commission on or about April 28, 2016.

The non-disclosure of Part 20 Large Trader reporting violations in the CCO Reports were material omissions that had the effect of misleading the Commission. The 2014 Report included a discussion of one issue of material non-compliance, involving confirmation reports incorrectly submitted to an SDR, and any reader of this Report would have reasonably (but incorrectly) concluded that this was Commerzbank's only instance of material non-compliance during 2014. By omitting the Part 20 reporting failures from the 2014 Report, Commerzbank omitted material facts that were necessary to make the 2014 Report's discussion of Commerzbank's ostensibly singular issue of material non-compliance, as well as other statements in the 2014 Report, not misleading in material respects.

The 2015 Report likewise did not discuss the Part 20 reporting issues that had previously been omitted from the 2014 Report. Commerzbank personnel, including senior compliance personnel, knew about these Part 20 violations, and discussed them internally, but decided to omit them from the 2015 Report. A senior compliance officer for Commerzbank in New York specifically considered whether to include these Part 20 violations in the 2015 Report prior to its submission, but decided not to include them—even though the compliance officer primarily responsible for drafting the 2015 Report recommended disclosing them. Moreover, the 2015 Report discussed in some detail two different Part 20 reporting issues that were, if anything, less serious than the omitted Part 20 violations. A reader of the CCO Reports could reasonably, but incorrectly, conclude that these were Commerzbank's only Part 20 reporting violations during 2014 and 2015. By omitting the other Part 20 reporting violations, even though a Commerzbank compliance officer had recommended disclosing them, Commerzbank omitted material facts that

were necessary to make the 2015 Report's statements regarding Part 20 reporting issues, as well as other statements in the 2015 Report, not misleading in material respects. Accordingly, Commerzbank violated Section 6(c)(2) of the Act.

**3. Commerzbank's Lack of Any Effective Bank-wide Process to Determine Whether Swap Transactions with Certain Non-U.S. Counterparties Were Subject to Dodd-Frank Requirements and Its Failure to Report Such Transactions to SDRs**

Certain swap transactions with non-U.S. entities that are related to U.S. entities must be reported to the Commission, reported to SDRs, and, potentially, must also comply with other Dodd-Frank requirements. Section 2(a)(13)(G) of the Act, 7 U.S.C. § 2(a)(13)(G) (2012), and Regulations 43.3 and 45.3, 17 C.F.R. §§ 43.3, 45.3 (2018); Section 4s(f)(1)(A) of the Act, 7 U.S.C. § 6s(f)(1)(A), and Regulations 20.4 and 20.7, 17 C.F.R. §§ 20.4 and 20.7 (2018); Section 2(h)(8) of the Act, 7 U.S.C. § 2(h)(8) (2012), and Regulation 37.9(a)(2), 17 C.F.R. § 37.9(a)(2) (2018); *see also* Section 2(i) of the Act, 7 U.S.C. § 2(i) (2012).

In order to comply with the legal requirements governing swap transactions of this kind, SDs that transact with non-U.S. persons must determine whether their swap counterparties have a sufficient connection to U.S. commerce such that Dodd-Frank applies. One way SDs make this determination is to ask their counterparties to submit a standard form Cross-Border Representation Letter, generated by the International Swaps and Derivatives Association ("ISDA," together with Cross-Border Representation Letter, "ISDA Letter"), which summarizes the relevant Commission guidance and asks the counterparty to represent whether or not it has certain characteristics that are relevant to assessing the applicability of Dodd-Frank requirements.

During the Relevant Period, Commerzbank transacted swaps with thousands of counterparties, many of them in Europe, that were not U.S. persons but that may have been sufficiently connected to the U.S. such that Dodd-Frank requirements applied. During this period, Commerzbank did not adopt any effective bank-wide process for determining whether it needed to comply with Dodd-Frank requirements in connection with these transactions. Some of Commerzbank's counterparties nonetheless submitted to Commerzbank the standard form ISDA Letter. At least 167 of Commerzbank's counterparties stated in letters to Commerzbank that they bore characteristics that the Commission has stated may indicate a sufficient connection to U.S. commerce to bring transactions with them within the scope of Dodd-Frank. Upon receiving these letters, Commerzbank did not notify the persons responsible for Commerzbank's Dodd-Frank compliance that these counterparties had submitted this information. Accordingly, Commerzbank made no effort to comply with the Dodd-Frank rules that applied to transactions with these counterparties. It nevertheless entered into approximately 17,000 swap transactions with these counterparties that were potentially subject to Dodd-Frank requirements. *See, e.g.*, Section 2(a)(13)(G) of the Act and Regulations 43.3 and 45.3. Commerzbank did not contemporaneously report its transactions with these counterparties to an SDR or, during much of the period at issue, seek to comply with other legal requirements that were potentially applicable to these transactions.



Moreover, during the Relevant Period, thousands of other Commerzbank swap counterparties did not submit the ISDA Letter to Commerzbank or otherwise inform Commerzbank of relevant criteria for determining whether Dodd-Frank applied to their swap transactions with Commerzbank. Commerzbank did not require these counterparties to submit the ISDA Letter, and did not make any other serious attempt to determine these counterparties' status. To date, Commerzbank still has not determined whether most of these counterparties are, or are not, sufficiently connected to the U.S. to make transactions with those counterparties subject to Dodd-Frank requirements. A Commerzbank internal audit report that was circulated in June 2018 concluded that the Bank's screening and onboarding procedures were insufficient to make this determination.

By failing to implement policies reasonably designed to determine whether its swap transactions with non-U.S. persons were subject to applicable legal requirements, Commerzbank violated Section 2(a)(13)(G) of the Act and Regulation 23.402(b). By failing to report such transactions to SDRs, Commerzbank violated Regulations 43.3 and 45.3. Commerzbank's comprehensive failure to make these determinations may also have caused the Bank to violate other legal requirements that are potentially applicable to transactions with such counterparties.

#### **4. Commerzbank's Failure to Report Swap Transactions to an SDR**

Commerzbank, as an SD, was a reporting counterparty required to report certain data about its swaps transactions to an SDR. *See* Section 2(a)(13)(G) of the Act, 7 U.S.C. § 2(a)(13)(G) (2012), and Regulations 43.3 and 45.3, 17 C.F.R. §§ 43.3, 45.3 (2018).

From December 2012 through at least 2016, Commerzbank did not implement sufficient processes and controls to ensure that its SDR reporting was accurate and complete. In May 2014, Commerzbank's external compliance consultant found that Commerzbank did not have adequate processes and controls to ensure the accuracy of its swap transaction reporting. Moreover, even after 2016, Commerzbank inadequately remediated its swap reporting deficiencies. A June 2018 internal audit report regarding Commerzbank's swap transaction reporting processes found an overall result of "not satisfactory," concluding that there were multiple, ongoing deficiencies in Commerzbank's control framework for swap reporting.

As a result of these control failures, Commerzbank on thousands of occasions failed to report swap transactions to an SDR consistent with the requirements of Section 2(a)(13)(G) of the Act and Regulations 43.3 and 45.3.

For example, in 2014, Commerzbank failed to provide trade confirmations of exotic equity swaps to an SDR. In its 2014 Report, Commerzbank disclosed this failure and represented that there was a gap in its confirmation reporting process, due to a change in the Bank's manual upload process, resulting in a failure to provide confirmation reports for certain swap transactions to the SDR. Commerzbank represented that it remediated the issue in December 2014, including by reporting the backlog of approximately 1,000 confirmations. However, this representation was incorrect. According to Commerzbank's 2016 CCO Report, the Bank discovered in November 2016 that the SDR reporting issue had not in fact been

remediated in December 2014. As a result, according to the 2016 Report, at least 370 additional exotic equity swap confirmations were not reported due to “employee turnover and a communication breakdown.”

Moreover, from 2014 through May 2017, hundreds of trade confirmations were not correctly submitted as a result of inaccurate information being transmitted by Commerzbank’s Front Office. In addition, on two occasions in May 2015 and December 2016, as a result of a software failure, Commerzbank reported thousands of transactions to an SDR with incorrect time stamps. Separately, in January 2016, because of an incorrectly-implemented software upgrade, Commerzbank failed to submit on a timely basis 995 real-time transaction reports. In April 2016, as a result of server capacity limitations, there was also a several-day period during which reports to an SDR were not timely submitted. Additionally, as discussed above, Commerzbank throughout this period failed to report certain other transactions to an SDR, as required.

Commerzbank’s SDR reporting failures violated Section 2(a)(13)(G) of the Act and Regulations 43.3 and 45.3.

## **5. Commerzbank’s Failure to Submit Large Trader Reports Consistent with the Commission’s Requirements**

Commerzbank’s Part 20 Large Trader Reports (“LTRs”) to the Commission were also deficient. As a provisionally-registered SD, Commerzbank was required to submit LTRs in the form and manner determined by the Commission. *See* Section 4s(f)(1)(A), 7 U.S.C. § 6s(f)(1)(A) (2012), and Regulations 20.4 and 20.7, 17 C.F.R. §§ 20.4, 20.7 (2018).<sup>4</sup>

From 2013 to 2014, Commerzbank submitted inaccurate LTRs for over 300 days, including by presenting data in a format inconsistent with Commission requirements. In March 2015, Commerzbank resubmitted corrected LTRs to the Commission for this time period. In addition, for one day in 2013 and one day in 2014, Commerzbank failed to submit any LTRs and, due to a technical failure, was unable to reproduce data for one of those two days.

Separately, from March 2013, the beginning of the reporting period, through 2016, Commerzbank failed to report to the Commission certain categories of swap transactions that Commerzbank entered into with Bank affiliates. Due to technical issues, Commerzbank failed to submit LTRs for certain inter-affiliate swap positions in various commodities during this time period. Commerzbank subsequently detected and reported these errors to the CFTC’s Division of Market Oversight (“DMO”) in November 2016, and thereafter resubmitted LTRs covering these inter-affiliate positions in early 2017.

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<sup>4</sup> The Part 20 rules became effective on September 20, 2011. Following the promulgation of the Part 20 rules, the Commission’s Division of Market Oversight, through a series of no-action letters, provided temporary relief from these reporting requirements and certain safe-harbor provisions. However, by March 1, 2013, such relief was no longer available and Commerzbank was required to be in full compliance with the Part 20 reporting requirements. *See* CFTC No-Action Letter No. 12-51 (Dec. 14, 2012), *available at* <https://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/12-51.pdf>

Commerzbank's failure to submit Part 20 reports consistent with Commission requirements, including its failure to submit certain categories of inter-affiliate transactions to the Commission in its Part 20 reports, violated Section 4s(f)(1)(A) of the Act and Regulations 20.4 and 20.7.

## **6. Commerzbank's Failure to Execute Certain Swaps on SEFs**

During 2014-2016, Commerzbank did not have sufficient procedures to determine whether trades were required to be executed on a SEF. Instead, Commerzbank appeared to rely primarily on its counterparties to determine whether trades were required to be executed on a SEF.

Relatedly, Commerzbank did not establish any type of monitoring program to determine whether swaps were incorrectly executed off a SEF until April, 2015. In 2016, a Commerzbank compliance officer noted in an internal email that the Bank's compliance department was unable to confirm counterparties' address information and suggested that the compliance department coordinate with the onboarding team in order to properly identify the status of counterparties and determine which trades were required to be conducted on a SEF. Most recently, a June 2018 internal Commerzbank audit report found that Commerzbank's internal gap analysis was insufficient to demonstrate Dodd-Frank Act compliance with respect to SEF execution.

As an apparent result of these control infirmities, Commerzbank failed to execute certain swaps as required on a SEF, including multiple instances from 2014 through 2016, where MAT trades were improperly executed off a SEF. For example, in 2015, a London trader failed to recognize that the counterparty was a U.S. person (or failed to recognize that a MAT product was being traded) and consequently failed to execute the trade on a SEF. Similarly, in 2016, a London trader failed to execute a voice trade on a SEF because he incorrectly believed that voice trades were exempt from SEF requirements. Further in 2016, another trader failed to execute a trade with a U.S. person on a SEF based on the client's incorrect understanding that it was exempt from SEF trading requirements.

These failures to execute on a SEF swaps that were required to be executed on a SEF violated Section 2(h)(8) of the Act, 7 U.S.C. § 2(h)(8) (2012), and Regulation 37.9(a)(2), 17 C.F.R. § 37.9(a)(2) (2018).

## **III. LEGAL DISCUSSION**

### **A. Commerzbank's Inadequate Supervision of Its Swap Dealer Violated Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B) (2012), and Regulation 23.602, 17 C.F.R. § 23.602 (2018)**

Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B) (2012), requires "diligent supervision of the business of the registered swap dealer." Regulation 23.602, 17 C.F.R. § 23.602 (2018), requires that SDs and major swap participants "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).”

The operative language of Regulation 23.602 (governing SDs and major swap participants), 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 (2018). Under Regulation 166.3, when a registrant’s supervisory system is generally inadequate, or 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*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,485 at 43,161 (CFTC Sept. 1, 1995); *In re Paragon Futures Assoc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC 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*, ¶ 25,266 at 38,850.

Commerzbank management failed to diligently supervise the SD. The failure was systemic and occurred over a long period of time. Management’s failure to supervise the SD directly resulted in violations of other provisions of the Act and accompanying Regulations. Accordingly, Commerzbank’s conduct violated Section 4s(h)(1)(B) of the Act and Regulation 23.602.

**B. Commerzbank’s Misleading Statements and Material Omissions in Its Chief Compliance Officer Reports to the Commission Violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012)**

Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012), prohibits making “any false or misleading statement of a material fact to the Commission, including . . . information relating to a swap, . . . or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect.”

As detailed above, in its 2014 Report to the Commission, which was submitted to the Commission on or about April 29, 2015, Commerzbank made misleading statements of material fact relating to SD compliance. In the same report, Commerzbank omitted material facts that were necessary to make other statements of material fact in the 2014 Report not misleading in material respects. In its 2015 Report, which was submitted on or about April 28, 2016, Commerzbank likewise omitted material facts that were necessary to make other statements of material fact in the 2015 Report not misleading in material respects.

These misleading statements and material omissions violated Section 6(c)(2) of the Act.

**C. Commerzbank’s Lack of Any Effective, Bank-wide Process to Determine Whether Swap Transactions with Certain Non-U.S. Persons Were Subject to Dodd-Frank Requirements Violated Regulation 23.402(b), 17 C.F.R. § 23.402(b) (2018), and Its Failure to Report Such Transactions to SDRs Violated Section 2(a)(13)(G) of the Act, 7 U.S.C. § 2(a)(13)(G) (2012), and Regulations 43.3 and 45.3, 17 C.F.R. §§ 43.3,**

### **45.3 (2018)**

Regulation 23.402(b), 17 C.F.R. § 23.402(b) (2018), requires SDs to implement policies and procedures reasonably designed to obtain a record of the essential facts concerning each counterparty, including facts required to comply with applicable laws, regulations, and rules.

Section 2(a)(13)(G) of the Act, 7 U.S.C. § 2(a)(13)(G) (2012), requires that swaps, both cleared and uncleared, be reported to an SDR, and establishes requirements for such reporting. This section of the Act and the Commission's implementing regulations set forth in Parts 43 and 45 of the Regulations, 17 C.F.R. pts. 43, 45 (2018), were designed to enhance transparency, promote standardization, and reduce systemic risk. Part 43 establishes requirements for the real-time reporting and public availability of swap transaction data. *See* Regulations 43.2 and 43.3, 17 C.F.R. §§ 43.2, 43.3 (2018). Under Part 43, reporting parties must report a publicly reportable swap transaction to an SDR as soon as technologically practicable after the swap transaction is executed. *See* Regulation 43.3.

Non-U.S. SDs such as Commerzbank may not be subject to SDR reporting requirements, depending on whether a given transaction is of a type that has a direct and significant effect on, or connection with, U.S. commerce. Section 2(i) of the Act, 7 U.S.C. § 2(i) (2012). The Commission has described factors it considers relevant to that determination. *See* Cross-Border Guidance, 45,348-51 and 45,355-59.

In violation of Regulation 23.402(b), Commerzbank failed to take measures sufficient to determine whether its swap transactions with non-U.S. persons were sufficiently connected to the U.S. so as to subject them to Dodd-Frank. As a result, in many instances, Commerzbank did not report to SDRs transactions that were subject to Dodd-Frank requirements, including Parts 43 and 45 of the Regulations. Accordingly, Commerzbank violated Section 2(a)(13)(G) of the Act and Regulations 23.402(b), 43.3 and 45.3.

#### **D. Commerzbank's Failure to Report Swap Transactions to an SDR also Violated Section 2(a)(13)(G) of the Act, 7 U.S.C. § 2(a)(13)(G) (2012), and Regulations 43.3 and 45.3, 17 C.F.R. §§ 43.3, 45.3 (2018)**

Section 2(a)(13)(G) of the Act, 7 U.S.C. § 2(a)(13)(G) (2012), requires that swaps, both cleared and uncleared, be reported to an SDR and establishes requirements for such reporting. This section of the Act and the Commission's implementing regulations in Parts 43 and 45 of the Regulations, 17 C.F.R. pts. 43, 45 (2018), 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 Ice Futures U.S.*, CFTC No. 15-17, 2015 WL 1276463 (CFTC Mar. 16, 2015) (consent order); *In re Deutsche Bank Secs. Inc.*, CFTC No. 15-11, 2015 WL 1508451 (CFTC Dec. 22, 2014) (consent order).

Among the requirements of the Act and Regulations related to swap reporting, Part 43 establishes requirements for the real-time reporting and public availability of swap transaction

data. *See* Regulations 43.2 and 43.3, 17 C.F.R. §§ 43.2, 43.3 (2018). Under Part 43, reporting parties must report a publicly-reportable swap transaction to an SDR as soon as technologically practicable after the swap transaction is executed. *See* Regulation 43.3.

Part 45 of the Regulations requires reporting parties to, among other things, report swap creation data to an SDR. Regulation 45.3, 17 C.F.R. § 45.3 (2018), sets forth the requirements for reporting creation data, including primary economic terms data and confirmation data. *See* Regulation 45.3(b)(1)(i), 45.3(c)(1)(i)(A), 45.3(b)(3)(i), and 45.3(c)(1)(iii).

From 2014 through 2016, Commerzbank experienced recurring issues with SDR reporting and failed to properly report swap transactions to an SDR in violation of Section 2(a)(13)(G) of the Act and Regulations 43.3 and 45.5.

**E. Commerzbank’s Failure to Submit Large Trader Reports Consistent with the Commission’s Requirements Violated Section 4s(f)(1)(A) of the Act, 7 U.S.C. § 6s(f)(1)(A) (2012), and Regulations 20.4, 20.7, 17 C.F.R. §§ 20.4, 20.7 (2018)**

Pursuant to Section 4s(f)(1)(A) of the Act, 7 U.S.C. § 6s(f)(1)(A) (2012), and Regulation 20.4, 17 C.F.R. § 20.4 (2018), SDs that meet certain requirements are required to file daily LTRs for reportable positions in physical commodity swaps, which are populated with specific data as directed by the Commission. The LTRs must also conform to the form and manner for reporting and submitting information as set forth in Regulation 20.7, 17 C.F.R. § 20.7 (2018). Regulation 20.7 provides, in relevant part:

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

The prescribed manner and form of reporting and submitting swaps data is provided in the Part 20 Guidebook.<sup>5</sup>

Commerzbank provisionally registered as an SD on December 31, 2012, and consequently was required to submit LTRs beginning March 1, 2013. In 2013 and 2014, Commerzbank submitted inaccurate LTRs for over 300 days in a manner that did not conform to the specifications required by the Commission. Additionally, for two days in 2013 and 2014, Commerzbank did not submit required LTRs altogether. Further, from the beginning of the reporting period, March 2013, through 2016, Commerzbank did not submit LTRs for certain inter-affiliate swap positions. Accordingly, Commerzbank violated Section 4s(f)(1)(A) of the

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<sup>5</sup> As provided for in Regulation 20.8, 17 C.F.R. § 20.8 (2018), the Commission delegated certain authority to the Director of DMO or others as the Director may designate from time to time. This delegated authority includes the authority pursuant to Regulation 20.7 “for providing instructions or determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under [Part 20].” 17 C.F.R. § 20.7 (2018).

Act and Regulations 20.4 and 20.7.

**F. Commerzbank’s Failure to Execute Certain Swaps on SEFs Violated Section 2(h)(8) of the Act, 7 U.S.C. § 2(h)(8) (2012), and Regulation 37.9(a)(2), 17 C.F.R. § 37.9(a)(2) (2018)**

Section 2(h)(8) of the Act, 7 U.S.C. § 2(h)(8) (2012), requires that transactions involving swaps subject to Section 2(h)(1) of the Act’s clearing requirement, 7 U.S.C. § 2(h)(1) (2012), be executed on or pursuant to the rules of a designated contract market (“DCM”) or SEF, unless no DCM or SEF makes such swaps available to trade or such swaps qualify for the clearing exception under Section 2(h)(7) of the Act, 7 U.S.C. § 2(h)(7) (2012) (the “trade execution requirement”).

On June 4, 2013, the Commission published regulations governing SEFs.<sup>6</sup> Pursuant to Regulation 37.9(a)(2), 17 C.F.R. § 37.9(a)(2) (2018), a swap that is subject to the trade execution requirement and is not a block trade, as defined under Regulation 43.2, 17 C.F.R. § 43.2 (2018), shall be executed on a SEF through either (1) an Order Book or (2) a Request for Quote System that operates in conjunction with an Order Book.

On multiple instances from 2014 through 2016, Commerzbank failed to execute certain MAT swaps on a SEF as required, in violation of Regulation 37.9(a)(2). Relatedly, Commerzbank failed to establish any type of monitoring program to determine whether swaps were being incorrectly transacted off a SEF until 2015.

**G. Commerzbank’s Liability for the Acts of Its Employees**

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2018), provide that the 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); *Dohmen-Ramirez & Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988).

The foregoing acts, omissions, and failures of Commerzbank’s employees occurred within the scope of their employment, office, or agency with Commerzbank; therefore, pursuant to Section 2(a)(1)(B) of the Act, and Regulation 1.2, Commerzbank is liable for those acts, omissions, and failures in violation of the Act and Regulations.

#### **IV. FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that Respondent violated Sections

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<sup>6</sup> Core Principles and Other Requirements for Swap Execution Facilities, 78 Fed. Reg. 33,476 (June 4, 2013).

2(a)(13)(G), 2(h)(8), 4s(f)(1)(A), 4s(h)(1)(B), and 6(c)(2) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 2(h)(8), 6s(f)(1)(A), 6s(h)(1)(B), 9(2) (2012), and Regulations 20.4, 20.7, 23.402(b), 23.602, 37.9, 43.3, and 45.3, 17 C.F.R. §§ 20.4, 20.7, 23.402(b), 23.602, 37.9, 43.3, 45.3 (2018).

## 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 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2018), 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, §§ 201-53, 110 Stat 847-874 (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;
- 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)(G), 2(h)(8), 4s(f)(1)(A), 4s(h)(1)(B), and 6(c)(2) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 2(h)(8), 6s(f)(1)(A), 6s(h)(1)(B), 9(2) (2012), and Regulations 20.4, 20.7, 23.402(b), 23.602, 37.9, 43.3, and 45.3, 17 C.F.R. §§ 20.4, 20.7, 23.402(b), 23.602, 37.9, 43.3, 45.3 (2018);
2. Orders Respondent to cease and desist from violating Sections 2(a)(13)(G), 2(h)(8), 4s(f)(1)(A), 4s(h)(1)(B), and 6(c)(2) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 2(h)(8), 6s(f)(1)(A), 6s(h)(1)(B), 9(2) (2012), and Regulations 20.4, 20.7, 23.402(b), 23.602, 37.9, 43.3, and 45.3, 17 C.F.R. §§ 20.4, 20.7, 23.402(b), 23.602, 37.9, 43.3, 45.3 (2018);
3. Orders Respondent to pay a civil monetary penalty in the amount of twelve million dollars (\$12,000,000), 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)(G), 2(h)(8), 4s(f)(1)(A), 4s(h)(1)(B), and 6(c)(2) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 2(h)(8), 6s(f)(1)(A), 6s(h)(1)(B), 9(2) (2012), and Regulations 20.4, 20.7, 23.402(b), 23.602, 37.9, 43.3, and 45.3, 17 C.F.R. §§ 20.4, 20.7, 23.402(b), 23.602, 37.9, 43.3, 45.3 (2018).
- B. Respondent shall pay a civil monetary penalty in the amount of twelve million dollars (\$12,000,000), (“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 (2012).

Respondent shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic funds transfer, 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  
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies 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. Retention of Outside Consultant to Review Swap Dealer Compliance: Respondent shall retain an outside consultant to assess the SD's compliance with the Commodity Exchange Act, and Commission Regulations, and make recommendations for improvements in the SD's practices, policies, and procedures. Respondent shall select the outside consultant, subject to Division approval of that selection. Respondent shall pay the outside consultant. The outside consultant shall review the Commerzbank SD for a period of two years and generate, during that period, two annual reports assessing the SD's compliance with the Commodity Exchange Act and Commission Regulations, and making specific recommendations for improvements in the SD's practices, policies, and procedures. Commerzbank shall provide a copy of each of these annual reports to the Commission. To facilitate the outside consultant's review, Commerzbank shall make available to the outside consultant all relevant Commerzbank records and personnel, whether located in the United States, Germany, or any other location. The Division, in its sole discretion, based on its

assessment of Commerzbank's remedial efforts, shall determine whether Commerzbank shall also retain an outside consultant for one additional year (third year) to generate a third annual report regarding SD compliance. If a third report is required, it must satisfy the same requirements as the first two annual reports from the outside consultant.

3. Submission of Certified Reports Regarding Swap Dealer Compliance:

Respondent shall, for a period of two years, submit to the Commission an annual report 90 days following the outside consultant's annual report outlined above that, specifically and in detail, discusses the Commerzbank SD's compliance with the Commodity Exchange Act and Commission Regulations in a manner consistent with the requirements of Regulation 3.3(e), 17

C.F.R. § 3.3(e), without regard to the Comparability Determination. These reports shall be signed by the Commerzbank SD's Chief Compliance Officer. The Chief Compliance Officer shall certify, under penalty of perjury, that the reports are, to the best of the Chief Compliance Officer's knowledge, accurate and complete. These reports must include a discussion of what Commerzbank is doing to comply with the recommendations made by the outside consultant regarding the SD's policies and procedures. If Commerzbank does not adopt one or more of the outside consultant's recommendations, such refusal must be specifically stated in Commerzbank's report to the Commission, and the reasons for not following the outside consultant's recommendations must be explained. The Division, in its sole discretion, based on its assessment of Commerzbank's remedial efforts, shall determine whether Commerzbank shall also be required to submit an additional (third) annual report regarding SD compliance. If a third report is required, it must satisfy the same requirements as the first two annual reports from Commerzbank to the Commission.

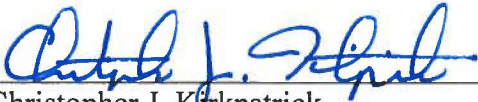
D. Cooperation, in General: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto for a period of three years. As part of such cooperation, Respondent agrees to:

1. preserve and produce to the Commission in a responsive and prompt manner, as requested by the Division's staff, all non-privileged documents, information, and other materials wherever located, subject to applicable laws and regulations, in the possession, custody, or control of Respondent;
2. accept service by mail, electronic mail, or facsimile transmission of notices or subpoenas for documents and/or testimony at depositions, hearings, or trials;
3. appoint Respondent's attorney as agent to receive service of such notices and subpoenas; and

4. waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules in connection with requests or subpoenas of the Division's staff;
- E. 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.

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

By the Commission.



Christopher J. Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: November 8, 2018