

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

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12:28 pm, Sep 22, 2016

_____)
In the Matter of:)

)
BARCLAYS BANK PLC,)

)
Respondent.)
_____)

CFTC Docket No. 16 –30

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6(c) and 6(d) OF THE COMMODITY EXCHANGE ACT,
MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS**

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that, from at least September 1, 2009 to October 16, 2012, Barclays Bank PLC (“Barclays” or “Respondent”), acting through its officers, agents, or employees, violated Commission Regulations (“Regulations”) 1.31(a)(2) and 1.35(a-2)(2), 17 C.F.R. §§ 1.31(a)(2) & 1.35(a-2)(2) (2012). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Barclays has engaged in the violations as set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of this administrative proceeding, Barclays 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, Barclays consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and 6(d) of the Commodity Exchange Act (“Act”), Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.¹

¹ Respondent consents to the entry of this Order and the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party provided, however, that Respondent does not consent to the use of the Offer, or the findings or conclusions consented to in this Order, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the findings or conclusions consented to in the Offer or this Order, by any other party in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

From at least September 1, 2009 to October 16, 2012 (“Relevant Period”), Barclays—acting through its agents, officers, and employees—cleared through and reported to the CME Group Inc. (“CME Group”) more than 3,700 metals and energy Exchange for Related Position (“EFRP”) trades.² Barclays failed to create, maintain, and promptly produce required confirmations for a significant number of these EFRP trades in violation of Regulations 1.31(a)(2) and 1.35(a-2)(2), 17 C.F.R. §§ 1.31(a)(2) & 1.35(a-2)(2) (2012).³

B. RESPONDENT

Barclays Bank PLC is a global banking and financial services company based in the United Kingdom that is engaged in retail and commercial banking, credit cards, investment banking, wealth management and investment management services. It is wholly owned by Barclays PLC and has offices in New York, New York. It became provisionally registered with the Commission as a swap dealer on December 31, 2012.

C. FACTS

Pursuant to CME Group rules, an EFRP trade is a privately negotiated and simultaneous exchange of a futures position for a corresponding and offsetting cash or OTC derivative position. During the Relevant Period, Regulation 1.35(a-2)(2), 17 C.F.R. § 1.35(a-2)(2)(2012), required parties to EFRP trades to maintain certain records relevant to the exchange contract and the related position transaction, including trade confirmations.

During the Relevant Period, Barclays entered into at least 3,717 metals and energy EFRP trades, each of which was cleared through CME Group’s ClearPort platform by Barclays’s affiliated U.S.-based Futures Commission Merchant, Barclays Capital, Inc. (“BCI”). On February 25, 2013, the Division requested, pursuant to Section 4g of the Act, that BCI produce documentation relating to EFRP transactions by Barclays or its affiliates from January 1, 2011 to the date of the request. After subsequent investigation and discussions, on April 23, 2014, the Division requested that BCI produce confirmations for all energy and metals EFRP transactions by Barclays or its affiliates for the Relevant Period. Eventually, BCI obtained from Barclays and jointly produced to the Commission confirmations for most of the metals and energy EFRP trades at issue. BCI and Barclays’s final production of requested confirmations,

² The CME Group and Barclays characterized these trades as transitory EFRPs, which the CME Group permitted for certain products until August 4, 2014. *See* CME Group Rule 538, Regulation Advisory Notice RA1311-5R (May 22, 2014).

³ Although Regulation 1.35(c), 17 C.F.R. § 1.35(c) (2015), has replaced Regulation 1.35(a-2), it mandates similar recordkeeping requirements.

however, was not made until June 18, 2015. Further, Barclays did not maintain and could not produce confirmations for at least 1,358 metals and energy EFRP trades during the Relevant Period.

In accepting Barclays's Offer, the Commission recognizes Barclays's cooperation during the investigation of this matter, notwithstanding the recordkeeping failures addressed herein. Further, the Commission recognizes that, before the Commission's investigation, Barclays instituted remedial action to strengthen the internal controls and policies relating to documenting and reporting confirmations for metals and energy EFRPs after the Relevant Period.

IV.

LEGAL DISCUSSION

During the Relevant Period, Regulation 1.35(a-2)(2) required (and Regulation 1.35(c)(2) continues to require) customers of FCMs to create, retain, and produce upon request of a Commission representative, among others, documentation relating to the customers' EFRP transactions. 17 C.F.R. § 1.35(a-2)(2) (2012); 17 C.F.R. § 1.35(c)(2) (2015). Barclays either did not create or did not retain confirmations for 1,358 metals and energy EFRP trades during the Relevant Period. Moreover, Barclays did not produce confirmations for these EFRP transactions to the Commission upon the request a Commission representative. These failures violated Regulation 1.35(a-2)(2) (2012).

During the Relevant Period, Regulation 1.31(a)(2) required (and continues to require) that copies of any books and records required to be kept under the Act or Commission Regulations shall be provided "promptly" to a Commission representative upon request. 17 C.F.R. § 1.31(a)(2) (2012); 17 C.F.R. § 1.31(a)(2) (2015). Barclays was unable to produce in a timely manner the requested EFRP confirmations that did exist, taking almost 14 months to locate and produce the required documentation. This failure violated Regulation 1.31(a)(2) (2012).

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds during the Relevant Period Respondent violated Regulations 1.31(a)(2) and 1.35(a-2)(2), 17 C.F.R. §§ 1.31(a)(2) & 1.35(a-2)(a)(2) (2012).

VI.

OFFER OF SETTLEMENT

Respondent has submitted an 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 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 (2012) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2015), 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, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), 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;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Barclays 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 Barclays violated Regulations 1.31(a)(2) and 1.35(a-2)(2), 17 C.F.R. §§ 1.31(a)(2) & 1.35(a-2)(2) (2012);
 2. orders Barclays to cease and desist from violating Regulations 1.31(a)(2) and 1.35(c)(2), 17 C.F.R. §§ 1.31(a)(2) & 1.35(c)(2) (2015);
 3. orders Barclays to pay a civil monetary penalty in the amount of five-hundred thousand dollars (\$500,000), plus post-judgment interest; and

4. orders Barclays and its successors and assigns, to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

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

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Barclays shall cease and desist from violating Regulations 1.31(a)(2) and 1.35(c)(2), 17 C.F.R. §§ 1.31(a)(2) & 1.35(c)(2) (2015);
- B. Civil Monetary Penalty: Barclays shall pay a civil monetary penalty in the amount of five-hundred thousand dollars (\$500,000), plus post-judgment interest, within fifteen (15) days of the date of the entry of this Order (the “CMP Obligation”). Should Barclays not satisfy its CMP Obligation within fifteen (15) days of the date of entry of this Order, 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. Barclays shall pay this penalty 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 by other than electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
405-954-7262 office
405-954-1620 fax
nikki.gibson@faa.gov

If payment by electronic funds transfer is chosen, Barclays shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Barclays shall accompany payment of the penalty with a cover letter that identifies Barclays and the name and docket number of this proceeding. Barclays shall simultaneously transmit copies of the cover letter and the form of payment to: 1) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, N.W., Washington, DC 20581, 2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, at the same address, and 3) the Deputy Director, Division of Enforcement, Commodity Futures Trading Commission, 4900 Main Street, Suite 500,


Kansas City, MO 64112. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if this amount is not paid in full within fifteen (15) days of the due date, Barclays shall be prohibited automatically from the privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until it has shown to the satisfaction of the Commission that payment of the full amount of the penalty, with interest thereon to the date of the payment, has been made.

C. Barclays and its successors and assigns shall comply with the following undertakings set forth in its Offer:

1. **Public Statements**: Barclays 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 Barclays's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Barclays and its successors and assigns 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. **Cooperation with the Commission**: Barclays shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, 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.
3. **Partial Satisfaction**: Barclays understands and agrees that any acceptance by the Commission of partial payment of Barclays'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.
4. **Change of Address/Phone**: Until such time as Barclays satisfies in full its CMP Obligation as set forth in this Order, Barclays 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 on this date.

By the Commission.



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

Dated: September 22, 2016