

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION



In the Matter of:)
)
)
Citibank, N.A. and Citigroup)
Global Markets Limited,) **CFTC Docket No. 17-26**
)
Respondents.)
_____)

**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 from at least April 2015 to December 2016 (the “Relevant Period”), Citibank, N.A. (“CBNA”) and Citigroup Global Markets Limited (“CGML”) (collectively, “Respondents” or “Citi”) violated Regulations 23.204, 23.602, 45.4, 45.6, 45.14, 46.3, 46.4, and 46.11 of the Commission Regulations (“Regulations”) promulgated under the Commodity Exchange Act (“Act”), 17 C.F.R. §§ 23.204, 23.602, 45.4, 45.6, 45.14, 46.3, 46.4, 46.11 (2017). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents 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, Respondents have submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondents consent 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 acknowledge service of this Order.¹

¹ Respondents consent to the use of these findings and conclusions 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 agree that they shall be taken as true and correct and be given preclusive effect therein, without further proof.

Respondents do 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, other than a: proceeding in bankruptcy, or receivership; or proceeding to enforce the terms of this Order.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

As provisionally registered swap dealers, CBNA and CGML are required to comply with certain recordkeeping and reporting requirements related to their swap transactions. In particular, the Regulations specify requirements for reporting the legal entity identifier (“LEI”) of each counterparty to a swap. *See* 17 C.F.R. pt. 45-46 (2017). An LEI is a unique, 20-character, alpha-numeric code, used to uniquely identify legally distinct entities that act as counterparties to swap transactions, among other financial transactions. The reporting requirements are designed to enhance transparency, promote standardization, and reduce systemic risk.

During the Relevant Period, Citi failed to report LEIs properly for tens of thousands of swaps. Many of Citi’s LEI reporting errors stemmed from a design flaw in its swap data reporting systems with respect to swap continuation data. Specifically, Citi did not design its swap data reporting systems to re-report trades based solely upon changes in counterparties’ LEI information, absent other life cycle events. The design flaw in Citi’s swap data reporting systems contributed to Citi failing to correct errors or omissions in its LEI data reporting in a timely manner. Citi also failed to report LEIs properly in connection with swaps with counterparties in certain foreign jurisdictions for which it reported counterparty identifiers as “Name Withheld.” Citi’s LEI reporting failures resulted in part due to a failure to supervise diligently with respect to LEI swap data reporting.

Reporting is at the heart of the Commission’s market and financial surveillance programs, which are critical to the Commission’s mission to protect market participants and promote market integrity. Accurate swap data is thus essential to effective fulfillment of the regulatory functions of the CFTC, including meaningful surveillance and enforcement programs. In particular, valid LEIs are crucial to the Commission’s assessment of systemic risk in the swaps markets because without LEIs, the Commission could not determine who was participating in each market and each participant’s level of risk.

In accepting Citi’s Offer, the Commission recognizes Citi’s significant cooperation during the investigation of this matter by the Commission’s Division of Enforcement (“Division”), which included undertaking analyses of its swap data reporting; categorizing and detailing errors for Division Staff; and taking remedial actions to correct its reporting failures, including making comprehensive enhancements to its LEI reporting processes, as well as making substantial efforts to implement and improve the use of LEIs more broadly across the industry.

Also, Respondents do 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.

B. RESPONDENTS

Respondent CBNA is a national banking association with its main office in Sioux Falls, South Dakota, and offices in, among other places, New York City. CBNA provides consumer finance, investment banking, commercial banking, and other services. CBNA became a provisionally registered swap dealer on December 31, 2012.

Respondent CGML is a non-U.S. swap dealer with a principal place of business in London, United Kingdom. CGML became a provisionally registered swap dealer on October 9, 2013.

C. FACTS

During the Relevant Period, Citi failed to report LEIs properly for tens of thousands of swaps. Many of Citi's LEI reporting errors stemmed from a design flaw in its swap data reporting systems with respect to continuation data reporting. While Citi's swap reporting systems generally re-reported trades (thereby updating the swap data repository's ("SDR") records) based upon the occurrence of various life cycle events, Citi did not design its systems to re-report a trade based solely upon a change in a counterparty's LEI, absent other life cycle events. As a result, Citi failed to report updated LEI information in the continuation data for thousands of swaps that were open as of April 2015. For example, in one instance, Citi's swap counterparty did not have an LEI as of the original trade date of December 12, 2013, Citi's counterparty then obtained an LEI and Citi had its counterparty's new LEI information at least as of December 10, 2014, but Citi failed to report the change in counterparty LEI to the SDR for 16 months, until April 2016.

Citi's inability to re-report trades based solely upon receiving new or updated counterparty LEI information, absent other life cycle events, also contributed to Citi failing to correct errors or omissions in its swap data reporting in a timely manner. Thus, although Citi identified thousands of LEI reporting errors in swaps open as of April 2015, Citi failed to complete submitting corrected information to its SDR with respect to certain LEI reporting errors until the end of June 2017.

Citi also failed to report LEIs properly in connection with swaps with counterparties in certain foreign jurisdictions. Recognizing potential conflicts between the Commission's reporting requirements and non-U.S. privacy, secrecy, and blocking laws, the Division of Market Oversight has issued certain time-limited and conditional no-action relief from LEI reporting requirements. *See, e.g.*, Karel Engelen, CFTC No-Action Letter, CFTCLTR No. 15-01, 2015 WL 221101 (Jan. 8, 2015). The no-action relief available as of April 2015 permitted a reporting party to mask the LEI of certain counterparties in its swap reporting pursuant to Parts 45 and 46 of the Regulations, provided, however, that in place of an LEI, the reporting party reported an alternative counterparty identifier, a "Privacy Law Identifier" or "PLI," that was unique, static, and consistent for each counterparty.² *See id.* at *4, *6. Rather than reporting a PLI that was

² The definition of "Privacy Law Identifier" states:

"Privacy Law Identifier" is a unique identifier, which is not an LEI, and is used to identify a Privacy Law Counterparty pursuant to this Division Letter. Each Reporting Counterparty shall use a consistent and static Privacy Law Identifier

unique to each counterparty, however, Citi reported the counterparty identifier “Name Withheld” for tens of thousands of swaps that were open as of April 2015. Citi continued this practice through at least December 2016.

Citi’s LEI reporting failures resulted in part due to a failure to supervise diligently with respect to LEI swap data reporting. Citi’s swap data reporting policy in effect as of April 2015, consistent with CFTC Regulations, identified that a counterparty’s LEI becoming available was a life cycle event that must be reported. Citi, however, failed to enforce this policy because, as described above, Citi’s systems did not report changes in a counterparty’s LEI as a life cycle event, absent other life cycle events. Further, Citi’s procedures for LEI swap data reporting did not adequately address compliance with CFTC no-action relief where it sought to rely upon such relief. Citi’s supervisory system also did not detect these and other LEI reporting errors until they were identified in the course of the Division of Enforcement’s investigation and Citi’s subsequent internal investigation.

III.

LEGAL DISCUSSION

To enhance transparency, promote standardization, and reduce systemic risk, Section 727 of the Dodd-Frank Act added to the Commodity Exchange Act a provision that requires all swaps, both cleared and uncleared, be reported to a registered SDR. *See* 7 U.S.C. § 2(a)(13)(G) (2012). Pursuant to this requirement, the Commission adopted implementing regulations, including under Part 45 (imposing recordkeeping and reporting requirements for post-transition swaps), 17 C.F.R. pt. 45 (2017), and Part 46 (imposing similar recordkeeping and reporting requirements for pre-enactment and transition swaps), 17 C.F.R. pt. 46 (2017); the requirements under these regulations were phased-in based upon asset classes. *See* Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 (Jan. 13, 2012); Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 Fed. Reg. 35,200 (June 12, 2012).

The Regulations mandate LEI reporting. Regulation 45.6 requires the reporting of LEIs in all swap data reporting pursuant to Part 45 of the Regulations. *See* 17 C.F.R. § 45.6. Regulation 46.4 requires, with respect to pre-enactment or transition swaps, a reporting counterparty to comply with all of the requirements of Regulation 45.6 after receipt of the non-reporting counterparty’s LEI. 17 C.F.R. § 46.4 (2017).

Part 45 of the Regulations also requires reporting parties to, among other things, report swap continuation data to ensure that all data in an SDR concerning a swap remains current and accurate. 17 C.F.R. § 45.4 (2017). The term “continuation data” means “all of the data elements that must be reported during the existence of a swap to ensure that all data concerning the swap in the [SDR] remains current and accurate, and includes all changes to the primary economic

for a Privacy Law Counterparty in each instance that it would use the Opposite LEI and other Enumerated Identifier.

CFTC No-Action Letter, 2015 WL 221101, at *4, *6.

terms of the swap occurring during the existence of the swap.”³ 17 C.F.R. § 45.1 (2017). The primary economic terms of a swap include the LEIs for both counterparties to a swap. *Id.*; 17 C.F.R. pt. 45 app. 1 (2017). Part 46 of the Regulations likewise requires reporting of certain continuation data, including LEI information, for pre-enactment or transition swaps. *See* 17 C.F.R. § 46.3(a) (2017).

Parts 45 and 46 of the Regulations also require a reporting counterparty to report and correct errors or omissions in its swap reporting to the registered SDR as soon as technologically practicable after discovery of the error or omission. 17 C.F.R. §§ 45.14(a); 46.11(a) (2017).

“The accuracy and completeness of swap reporting are critical to the Commission’s mission to protect market participants and to ensure market integrity.” *In re Société Générale S.A.*, CFTC No. 17-01, 2016 WL 7210405, at *4 (Dec. 7, 2016) (consent order); *see also In re Deutsche Bank AG*, CFTC No. 15-40, 2015 WL 5783049 (Sept. 30, 2015) (consent order); *In re ICE Futures U.S., Inc.*, CFTC No. 15-17, 2015 WL 1276463 (Mar. 16, 2015) (consent order). The Commission requires complete and accurate reporting data to engage in meaningful oversight of the swaps market.

Because of the importance of the swap reporting requirements, the Commission requires each swap dealer to have the electronic systems and procedures necessary to transmit electronically all information and data required to be reported in accordance with Part 45 of the Regulations. 17 C.F.R. § 23.204(b) (2017). The Commission further requires each swap dealer to establish and maintain a system to supervise, and to diligently supervise, all activities relating to its business performed by its partners, members, officers, employees, and agents (or persons occupying a similar function). 17 C.F.R. § 23.602 (2017).

During the Relevant Period, Respondents had not designed their swap data reporting systems to re-report a trade based solely upon a change in a counterparty’s LEI, absent other life cycle events. As a result, Respondents failed to report continuation data properly, in violation of Regulations 45.4 and 46.3(a), and failed to establish the electronic systems and procedures necessary to do so, in violation of Regulation 23.204(b). The design flaw in Respondents’ swap data reporting systems also contributed to Respondents failing to correct errors in LEI data previously reported to an SDR in a timely manner, in violation of Regulations 45.14(a) and 46.11(a), 17 C.F.R. §§ 45.14(a), 46.11(a) (2017). Respondents also violated Regulation 45.6 and 46.4, 17 C.F.R. §§ 45.6, 46.4 (2017), by reporting “Name Withheld” as the counterparty identifier for counterparties in certain foreign jurisdictions. Respondents’ use of “Name Withheld” as a counterparty identifier for tens of thousands of swaps did not satisfy the conditions of the available no-action relief, which required, among other things, the reporting of a PLI that was unique to each counterparty.⁴ Respondents also failed to perform their

³ Continuation data includes, but is not limited to, all “life cycle event data” for the swap. 17 C.F.R. § 45.1. “Life cycle event data” means all of the data elements necessary to fully report any “life cycle event.” *Id.* “Life cycle event” includes “any event that would result in either a change to a primary economic term of a swap or to any primary economic terms data previously reported to a swap data repository in connection with a swap. Examples of such events include, without limitation, . . . [the] availability of a legal entity identifier for a swap counterparty previously identified by name or by some other identifier.” *Id.*

⁴ Respondents could not claim that they met the conditions of the no-action relief.

supervisory duties diligently with respect to LEI swap data reporting by failing to enforce existing policies, failing to adequately address compliance with no-action relief where Respondents sought to rely upon such relief, and failing to detect repeated LEI reporting errors, in violation of Regulation 23.602.

The foregoing acts, omissions, and failures of CBNA and CGML employees and/or agents occurred within the scope of their employment, office, or agency with CBNA and CGML; therefore, pursuant to 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 (2017), CBNA and CGML are liable for those acts, omissions, and failures in violation of Regulations 23.204, 23.602, 45.4, 45.6, 45.14, 46.3, 46.4, and 46.11.

IV.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, CBNA and CGML violated Regulations 23.204, 23.602, 45.4, 45.6, 45.14, 46.3, 46.4, and 46.11, 17 C.F.R. §§ 23.204, 23.602, 45.4, 45.6, 45.14, 46.3, 46.4, 46.11 (2017).

V.

OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they, without admitting or denying the findings and conclusions herein:

- A. Acknowledge receipt of service of this Order;
- B. Admit 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. Waive:
 - 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 they 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 (2017), relating to, or arising from, this proceeding;

7. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-68 (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 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. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer;
- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Respondents violated Regulations 23.204, 23.602, 45.4, 45.6, 45.14, 46.3, 46.4, and 46.11, 17 C.F.R. §§ 23.204, 23.602, 45.4, 45.6, 45.14, 46.3, 46.4, 46.11;
 2. Orders Respondents to cease and desist from violating Regulations 23.204, 23.602, 45.4, 45.6, 45.14, 46.3, 46.4, and 46.11, 17 C.F.R. §§ 23.204, 23.602, 45.4, 45.6, 45.14, 46.3, 46.4, 46.11;
 3. Orders Respondents to pay, jointly and severally, a civil monetary penalty in the amount of five hundred and fifty thousand U.S. dollars (\$550,000), plus post-judgment interest within ten (10) days of the date of entry of this Order; and
 4. Orders Respondents and their 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. Respondents shall cease and desist from violating Regulations 23.204, 23.602, 45.4, 45.6, 45.14, 46.3, 46.4, and 46.11, 17 C.F.R. §§ 23.204, 23.602, 45.4, 45.6, 45.14, 46.3, 46.4, 46.11 (2017).
- B. Respondents shall pay, jointly and severally, a civil monetary penalty in the amount of five hundred and fifty thousand U.S. dollars (\$550,000) ("CMP Obligation"), plus post-judgment interest, within ten (10) days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten (10) days of the date of 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 (2012).

Respondent(s) shall pay the CMP Obligation 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:

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 is to be made by electronic funds transfer, Respondents shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents 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.

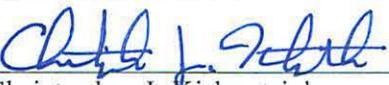
- C. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements:** Respondents agree that neither they nor any of their successors and assigns, agents or employees under their authority or control shall take 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 Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.
 2. **Partial Satisfaction:** Respondents understand and agree that any acceptance by the Commission of any partial payment of Respondents' CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

3. Change of Address/Phone: Until such time as Respondents satisfy in full their CMP Obligation as set forth in this Consent Order, Respondents shall provide written notice to the Commission by certified mail of any change to their respective telephone numbers and/or mailing addresses within ten (10) calendar days of the change.

4. Remediation: Respondents represent that they have submitted corrected LEI information to their SDR with respect to the LEI reporting errors brought to the attention of Division Staff as of the date of the filing of this Order. Respondents will implement and enhance their policies and procedures for LEI swap data reporting. Specifically, Respondents will:
 - a. Enhance Citi's LEI reporting processes relating to the reporting of updated or corrected LEIs in a manner reasonably designed to comply with Regulations 23.204(b), 45.4, 45.6, 45.14, 46.3, 46.4, and 46.11, 17 C.F.R. § 23.204(b), 45.4, 45.6, 45.14, 46.3, 46.4, 46.11;
 - b. Enhance Citi's LEI reporting processes relating to the reporting of unique PLIs in a manner reasonably designed to satisfy the conditions of CFTC Letter No. 17-16, Eleanor Hsu & Alison Lurton, CFTCLTR No. 17-16, 2017 WL 956234 (Mar. 10, 2017), or any successor thereto, where Citi intends to rely upon such no-action relief;
 - c. Enhance Citi's procedures, training programs, and supervisory practices with respect to its LEI swap data reporting; and
 - d. Within 120 days of the entry of this Order, Respondents shall make a report to the Commission, through the Division, concerning their remediation efforts before and since the entry of this Order. Within 365 days of the entry of this Order, Respondents shall submit a written report to the Commission, through the Division explaining how Respondents have complied with the undertakings set forth herein. The written report shall contain a certification from Respondents' chief compliance officer(s) that Respondents have established policies, procedures, and controls to satisfy the undertakings set forth in the Order.

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

By the Commission.



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

Dated: September 25, 2017