

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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11:12 am, Dec 07, 2016

In the Matter of:)

Société Générale SA,)

Respondent.)

) CFTC Docket No. 17-01
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)
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**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS AND IMPOSING REMEDIAL SANCTIONS**

I.

The Commodity Futures Trading Commission (“Commission” or “CFTC”) has reason to believe that from approximately July 2014 through April 2015 (the “relevant period”), Société Générale SA (“Respondent” or “Société Générale”) violated Sections 2(a)(13)(F) and (G) and 4r(a)(3) of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 2(a)(13)(F), (G), 6r(a)(3) (2012), and Commission Regulations (“Regulations”) 43.3(a), 43.4(a), 45.3(c) and 45.4(a), 17 C.F.R. §§ 43.3(a), 43.4(a), 45.3(c) and 45.4(a) (2016). 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.

II.

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 Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledge service of this Order.¹

¹ Respondent consents to the entry of this Order and to 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 in this Order consented to in the Offer, 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 in this Order consented to in the Offer, by any other party in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

As a provisionally registered swap dealer, Société Générale is required to comply with certain reporting requirements related to its swap transactions. Section 2(a)(13)(F) and (G) of the Act, 7 U.S.C. § 2(a)(13)(F), (G) (2012), requires parties to a swap transaction to report swap transaction information to a registered swap data repository (“SDR”) in a timely manner, as prescribed by the Commission. Similarly, Section 4r(a)(3) of the Act, 7 U.S.C. § 6r(a)(3) (2012) requires swap dealers to report swap transactions to a SDR within such time period as prescribed by the Commission. In particular, Commission Regulations specify requirements for real-time public reporting, public availability of swap transaction and pricing data, and reporting of creation and continuation data to a SDR. *See* 17 C.F.R. §§ 43, 45 (2016). The reporting requirements are designed to enhance transparency, promote standardization, and reduce systemic risk.

During the relevant period, Société Générale inadvertently failed to properly report non-deliverable forward transactions to a SDR in violation of Section 2(a)(13)(F) and (G) of the Act, 7 U.S.C. § 2(a)(13)(F), (G) (2012) and Regulations 43.3(a)(3) and 43.4(a), 17 C.F.R. §§ 43.3(a)(3), 43.4(a) (2016). Similarly, during the relevant period, Société Générale, as the reporting counterparty, mistakenly failed to timely report to a SDR a large number of FX swap, FX forward, and non-deliverable forward transactions, including the requisite continuation data for those transactions, in violation of Section 4r(a)(3) of the Act, 7 U.S.C. § 6r(a)(3) (2012) and Regulations 45.3(c)(1) and 45.4(a), 17 C.F.R. §§ 45.3(c)(1), 45.4(a) (2016).

Because of Société Générale’s reporting failures, data for the non-deliverable forward trades was not disseminated to the market through the real time public tape, and data for the FX swaps, FX forwards, and non-deliverable forwards was not reported to the Commission. 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 Commission, including meaningful surveillance and enforcement programs. Moreover, real-time public dissemination of swap transaction and pricing data supports the fairness and efficiency of markets and increases transparency, which in turn improves price discovery.

In accepting Société Générale’s Offer, the Commission recognizes Respondent’s significant cooperation during the investigation of this matter by the Commission’s Division of Enforcement (“Division”), which included self-reporting, undertaking an internal investigation, and taking remedial action to correct its reporting failures.²

² The Commission has long given credit for cooperative conduct by respondents and defendants when determining the appropriate level of sanctions to impose or approve in enforcement actions. *See* CFTC Policy Statement Relating to the Commission’s Authority to Impose Civil Money Penalties, [1994 Transfer Binder] *Comm. Fut. L. Rep. (CCH)* ¶26,265 (November 1, 1994); *See also* 2004 Enforcement Advisory on Cooperation, Cooperation Factors in Enforcement Division Sanction Recommendations,

B. RESPONDENT

Société Générale SA is a non-United States swap dealer headquartered in Paris, France. Société Générale was provisionally registered as a swap dealer with the Commission on December 31, 2012.

C. FACTS

Société Générale's failure to properly report its swap transactions had its genesis in July 2014, when it implemented a software update to its FX trading platform. That software update led to the trading platform incorrectly coding Société Générale's counterparty as the reporting counterparty for certain FX swaps, FX forwards and non-deliverable forwards when the trading platform should have coded Société Générale as the reporting party. This error led to neither party to certain FX swaps, FX forwards, and non-deliverable forwards making any report regarding the swaps to the SDR.

Société Générale first discovered the error in January 2015, during a routine control check, when it determined that its computer system had inadvertently flagged the counterparty as the reporting party for a swap transaction. Upon discovering the coding error, Société Générale's Operations Group and IT Team worked to repair the error, which was not fixed until April 2015. On April 26, 2015, Société Générale began reporting daily snapshots for all new trades as well as any open positions, using the new coding. Also in late April 2015, Société Générale initiated a project to identify trades affected by the coding error. At the same time, Société Générale's staff began discussions with its SDR, Depository Trust and Clearing Corporation ("DTCC"), to determine how to back-load swap reports under Regulations 43 and 45.

On September 18, 2015, Société Générale notified the Commission's Division of Market Oversight ("DMO") staff about its failure to report a large number of swaps due to the coding error. For the FX swap, FX forward, and non-deliverable forward transactions, DMO staff confirmed the need for Société Générale to submit reports required under Regulations 43 and 45, and for DTCC to publish the Regulation 43 reports.

Société Générale submitted its Regulation 45 SDR data related to the FX swaps, FX forwards and non-deliverable forward trades, by back-loading a single state data report, covering 51,821 unreported FX swap, FX forward, and non-deliverable forward transactions on October 27, 2015. Between November 2015 and April 2016, Société Générale and DTCC discussed how to submit its Regulation 43 real time reports, covering approximately 2,024 non-deliverable forward transactions, in order to minimize the potential unintended consequences of publishing old trades to the real-time public tape. After consulting with DMO staff in late April 2016 to confirm the methodology for Société Générale to submit, and for DTCC to publish, the

available

at:<http://www.cftc.gov/ucm/groups/public/@cpdisciplinaryhistory/documents/file/enfcooperation-advisory.pdf>.

Regulation 43 reports, Société Générale submitted small batches of real time messages and completed their Regulation 43 submissions for the non-deliverable forward transactions on May 6, 2016.

IV.

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 and establishes requirements for real-time reporting and public availability of swap transaction data. *See* 7 U.S.C. §2(a)(13)(G)(2012). Pursuant to these requirements, the Commission adopted implementing regulations, including under Parts 43 and 45; the requirements under these regulations were phased-in based upon asset classes. *See Real-Time Public Reporting of Swap Transaction Data*, 77 Fed.Reg. 1182 (Jan. 9, 2012); *Swap Data Recordkeeping and Reporting Requirements*, 77 Fed.Reg. 2136 (Jan. 13, 2012).

Part 43 establishes requirements for the real-time public reporting and public availability of swap transaction data. *See* 17 C.F.R. §§ 43.2, 43.3 (2016). 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* 17 C.F.R. § 43.3(a)(1) (2016). A publicly reportable swap transaction is defined in Regulation 43.2 and includes, among other things, “[a]ny termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap that changes the pricing of a swap.” 17 C.F.R. § 43.2 (2016).

Part 45 requires reporting parties to, among other things, report swap creation and continuation data to ensure that all data concerning a swap remains current and accurate. 17 C.F.R. §§ 45.3, 45.4 (2016). Reporting parties can comply with the continuation data requirement by “reporting life cycle event data or state data for the swap ...” 17 C.F.R. § 45.4(a) (2016). The Regulations define a life cycle event to include “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[,]” including among other things, a “partial or full termination of the swap,” a “change to the end date for the swap,” and “a change in the cash flows or rates originally reported.” 17 C.F.R. § 45.1 (2016).

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 Deutsche Bank AG*, CFTC No. 15-40, 2015 WL 5783049 (CFTC Sept. 30, 2015) (consent order); *In re ICE Futures U.S., Inc.*, CFTC No. 15-17, 2015 WL 1276463 (CFTC Mar. 16, 2015) (consent order). Market participants rely upon the public availability of swaps data for price discovery purposes. The Commission, in turn, requires complete and accurate reporting data to engage in meaningful oversight of the swaps market.

During the relevant period, Société Générale failed to properly report non-deliverable forward transactions to a SDR in violation of Section 2(a)(13)(F) and (G) of the Act, 7 U.S.C. § 2(a)(13)(F), (G) (2012), and Regulations 43.3(a)(3) and 43.4(a), 17 C.F.R. §§ 43.3(a)(3), 43.4(a)

(2016). Similarly, during the relevant period, Société Générale, as the reporting counterparty, failed to timely report to a SDR a large number of FX swap, FX forward, and non-deliverable forward transactions, including the requisite continuation data for those transactions, in violation of Section 4r(a)(3) of the Act, 7 U.S.C. § 6r(a)(3) (2012), and Regulations 45.3(c)(1) and 45.4(a), 17 C.F.R. §§ 45.3(c)(1), 45.4(a) (2016). The foregoing acts, omissions, and failures of Société Générale's employees occurred within the scope of their employment, office, or agency with Société Générale; therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.D. §2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2016), Société Générale is liable for those acts, omissions, and failures in violation of Sections 2(a)(13)(F) and (G) and 4r(a)(3) of the Act, 7 U.S.C. §§ 2(a)(13)(F), (G), 6r(a)(3) (2012), and Regulations 43.3(a), 43.4(a), 45.3(c) and 45.4(a), 17 C.F.R. §§ 43.3(a), 43.4(a), 45.3(c) and 45.4(a) (2016).

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that during the relevant period, Société Générale violated Sections 2(a)(13)(F) and (G) and 4r(a)(3) of the Act, 7 U.S.C. §§ 2(a)(13)(F), (G), 6r(a)(3) (2012), and Regulations 43.3(a)(3), 43.4(a), 45.3(c)(1) and 45.4(a), 17 C.F.R. §§ 43.3(a)(3), 43.4(a), 45.3(c)(1) and 45.4(a) (2016).

VI.

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 the Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in the Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of the Order;
- C. Waives:
 - 1. the filing and service of a complaint and notice of hearing;
 - 2. a hearing;
 - 3. all post-hearing procedures;
 - 4. judicial review by any court;
 - 5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of this 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 Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2016), 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 the Order is entered shall consist solely of the findings contained in the Order to which Respondent has consented in this Offer; and
- E. Consents, solely on the basis of the Offer, to the Commission's entry of the Order in the form attached hereto that:
1. Makes findings by the Commission that Respondent violated Sections 2(a)(13)(F) and (G) and 4r(a)(3) of the Act, 7 U.S.C. §§ 2(a)(13)(F), (G), 6r(a)(3) (2012), and Regulations 43.3(a), 43.4(a), 45.3(c) and 45.4(a), 17 C.F.R. §§ 43.3(a), 43.4(a), 45.3(c) and 45.4(a) (2016);
 2. Orders Respondent to cease and desist from violating Sections 2(a)(13)(F) and (G) and 4r(a)(3) of the Act, 7 U.S.C. §§ 2(a)(13)(F), (G), 6r(a)(3) (2012), and Regulations 43.3(a), 43.4(a), 45.3(c) and 45.4(a), 17 C.F.R. §§ 43.3(a), 43.4(a), 45.3(c) and 45.4(a) (2016);
 3. Orders Respondent to pay a civil monetary penalty ("CMP Obligation") in the amount of four hundred fifty thousand dollars (\$450,000), plus post-judgment interest, within ten (10) days of the date of the entry of the Order. If the CMP Obligation is not paid in full within ten days (10) 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 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 by electronic funds transfer is chosen, Respondent shall contact Nikki Gibson 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. 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, 1155 21st Street, N.W., Washington, D.C. 20581.

4. Orders Respondent and any successors or assignees of Respondent to comply with its undertakings set forth in Section III of this Offer.

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

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Sections 2(a)(13)(F) and (G) and 4r(a)(3) of the Act, 7 U.S.C. §§ 2(a)(13)(F), (G), 6r(a)(3) (2012), and Regulations 43.3(a), 43.4(a), 45.3(c) and 45.4(a), 17 C.F.R. §§ 43.3(a), 43.4(a), 45.3(c) and 45.4(a) (2016);
- B. Respondent shall pay a civil monetary penalty in the amount of four hundred fifty thousand dollars (\$450,000), within ten (10) days of the date of entry of this Order (the "CMP Obligation"). 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 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, Respondent shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent(s) shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

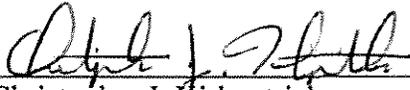
- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither it nor any of its successors or assigns, agents or employees under its authority or control shall take any action or 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 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. 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.

3. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Consent Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten (10) calendar days of the change

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

By the Commission.



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

Dated: December 7, 2016