

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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10:40 am, Sep 27, 2016

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In the Matter of)
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Wells Fargo Bank, N.A.,)

Respondent.)
_____)

CFTC Docket No. 16-32

**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 March 1, 2013, through November 13, 2015 (the “Relevant Period”), Wells Fargo Bank, N.A. (“Respondent”) violated Section 4s(f)(1)(A) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6s(f)(1)(A) (2012), and Commission Regulations (“Regulations”) 20.4 and 20.7, 17 C.F.R. §§ 20.4 and 20.7 (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 of Respondent Wells Fargo Bank, N.A. (“Offer”) that 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 acknowledges 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 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

Pursuant to Section 4s(f)(1)(A), 7 U.S.C. § 6s(f)(1)(A) (2012), and Regulation 20.4, 17 C.F.R. § 20.4 (2016), Swap Dealers that meet certain requirements are required to file daily large trader reports for reportable positions in physical commodity swaps (“LTRs”), 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 (2016).

During the Relevant Period, Respondent filed LTRs which failed to comply with certain Commission requirements. In accepting Respondent’s Offer, the Commission recognizes Respondent’s cooperation during the investigation of this matter by the CFTC’s Division of Enforcement (“Division”), including Respondent’s prompt remediation upon learning of the non-compliant status of its LTRs and subsequent self-disclosures of reporting deficiencies to the CFTC’s Office of Data and Technology (“ODT”).

B. RESPONDENT

Respondent has its main office in Sioux Falls, South Dakota and has been provisionally registered with the Commission as a Swap Dealer (“SD”) since December 31, 2012.

C. FACTS

As a provisionally registered SD, Respondent is required to submit LTRs in the form and manner determined by the Commission.² During the Relevant Period, Respondent submitted inaccurate LTRs that contained multiple errors, including both missing data and data presented in a format inconsistent with CFTC requirements. Between March 1, 2013 and November 13, 2015, every LTR report submitted by Respondent failed to meet the Part 20 requirements. Errors in Respondent’s reports included, at various times during the Relevant Period, records that (1) failed to use the correct Reporting Entity Identifier; (2) improperly formatted entries in the “Nonstandard Swaption Indicator” field; (3) improperly formatted swaption expiration date values; (4) failed to provide a value for the gross (long or short) swap or swaption notional position; (5) failed, when the non-standard swaption indicator was either “null” or “standard,” to complete logically related fields such as the gross (long or short) “delta adjusted,” swaption strike price, swaption put or call, and/or swaption expiration date fields with appropriate “null” or substantive values; (6) improperly contained negative values for gross (long or short) swap,

² 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 Respondent was required to be in full compliance with the Part 20 reporting requirements.

gross (long or short) “delta adjusted” or “non-delta adjusted” swaption positions; (7) improperly contained principal positions that were not greater than or equal to the sum of the corresponding counterparty positions for uncleared NYMEX NG swaps or swaptions; and (8) improperly contained (a) both a “Futures Equivalent Month” position and a “Price Reference Month” position or (b) neither a “Futures Equivalent Month” position nor a “Price Reference Month” position.

Given these errors, Respondent’s LTRs did not comply with the requirements governing Part 20 Reports, which are set forth in Regulations 20.4 and 20.7, 17 C.F.R. §§ 20.4 and 20.7 (2016), in conjunction with further instructions provided in the Large Trader Reporting for Physical Commodity Swaps: Division of Market Oversight Guidebook for Part 20 Reports (“Part 20 Guidebook”).

In accepting Respondent’s Offer, the Commission recognizes Respondent’s cooperation in this matter. Upon receiving its first error message from the Commission in July 2015, respondent analyzed its past reports, self-disclosed additional issues with its LTRs, and made and continues to make modifications to its data processing and reporting systems as necessary to comply with its LTR reporting requirements.

IV.

LEGAL DISCUSSION

Pursuant to Section 4s(f)(1)(A) of the Act: “Each registered swap dealer and major swap participant . . . shall make such reports as are required by the Commission by rule or regulation regarding the transactions and positions and financial condition of the registered swap dealer or major swap participant.” 7 U.S.C. § 6s(f)(1)(A) (2012). Regulation 20.4(c) provides certain enumerated data elements that must be included in a SD’s data report. 17 C.F.R. § 20.4(c) (2016). These data elements include, among others: the commodity underlying the reportable positions, the commodity reference price, futures equivalent month, long paired swap positions and short paired swap positions, swaption strike price, name of the counterparty, and an identifier indicating that a principal or counterparty position is being reported.

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.

17 C.F.R. § 20.7 (2016). The prescribed manner and form of reporting and submitting swaps data is provided in the Part 20 Guidebook.³

³ As provided for in Regulation 20.8, 17 C.F.R. § 20.8 (2016), the Commission delegated certain authority to the Director of DMO or others as the Director may designate from time to

Large trader reporting for physical commodity swaps is essential to the Commission's ability to conduct effective surveillance of markets in U.S. physical commodity futures and economically equivalent swaps. Failure to comply with the reporting specifications set forth by the Commission hinders the Commission's ability to efficiently process and effectively utilize this critical data. The accuracy of the reports is critical to the mission of the Commission for numerous reasons, including surveillance of the markets to detect disruptions to market integrity, enforcement and calculating statistics that the Commission publishes to enhance market transparency. *See, e.g., In re Barclays Bank PLC*, CFTC No. 16-20 (CFTC July 6, 2016) (consent order); *In re Deutsche Bank AG*, CFTC No. 15-40 (CFTC Sept. 30, 2015) (consent order); *In re Australia and New Zealand Banking Group, Ltd.*, CFTC No. 15-31 (Sept. 17, 2015) (consent order); *In re JP Morgan Securities LLC*, CFTC No. 14-19 (July 29, 2014) (consent order).

Respondent provisionally registered as a SD on December 31, 2012, and was required to submit LTRs during the Relevant Period. LTRs submitted by Respondent omitted required data elements and reported certain data in a manner that did not conform to the specifications required by the Commission. Accordingly, Respondent violated Section 4s(f)(1)(A) of the Act, 7 U.S.C. § 6s(f)(1)(A) (2012), and Regulations 20.4 and 20.7, 17 C.F.R. §§ 20.4 and 20.7 (2015).

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent violated Section 4s(f)(1)(A) of the Act, 7 U.S.C. § 6s(f)(1)(A) (2012), and Regulations 20.4 and 20.7, 17 C.F.R. §§ 20.4 and 20.7 (2015).

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 to all the 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:

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 (2016).

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 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, 857-68 (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 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 Section 4s(f)(1)(A) of the Act, 7 U.S.C. § 6s(f)(1)(A) (2012), and Regulations 20.4 and 20.7, 17 C.F.R. §§ 20.4 and 20.7 (2016);
 2. orders Respondent to cease and desist from violating Section 4s(f)(1)(A) of the Act, 7 U.S.C. § 6s(f)(1)(A) (2012), and Regulations 20.4 and 20.7, 17 C.F.R. §§ 20.4 and 20.7 (2016), as such violations relate to the conduct described above;
 3. orders Respondent to pay a civil monetary penalty in the amount of \$400,000, plus post-judgment interest, within fifteen (15) business days of the date of the entry of this Order;
 4. orders Respondent to comply with the conditions, undertakings, and representations consented to in the Offer and 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. Respondent shall cease and desist from violating Section 4s(f)(1)(A) of the Act, 7 U.S.C. § 6s(f)(1)(A) (2012), and Regulations 20.4 and 20.7, 17 C.F.R. §§ 20.4 and 20.7 (2016), as such violations relate to the conduct described above.
- B. Respondent shall pay a civil monetary penalty in the amount of four hundred thousand dollars (\$400,000) (the "CMP Obligation"), plus post-judgment interest, within fifteen (15) business days of the date of the entry of the Order. If the CMP Obligation is not paid in full within fifteen (15) business 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 this 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, Respondent shall make the payment 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 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 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. 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.

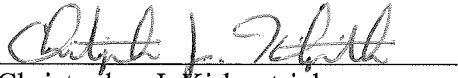
- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

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 undertake all steps necessary to ensure that all of its agents and/or employees under their authority or control understand and comply with this agreement.
2. Cooperation with the Commission: Respondent 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, including any matter in which the Respondent has previously provided information.
3. 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.
4. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten (10) calendar days of the change.
5. Representations:
 - a. Respondent has reviewed and is revising its reporting systems for LTRs to address the errors identified during the Relevant Period and additional errors that it has self-reported to the Staff. Respondent will continue to monitor its LTRs and will provide monthly status reports on the development of its LTR reporting systems, including any ongoing deficiencies, to the CFTC's Office of Data & Technology and/or the Commission's Division of Market Oversight for a period of one (1) year from the date of entry of this order, to ensure compliance with the Commission's LTR data requirements; and
 - b. After the Respondent has revised its reporting system for LTRs, but no later than fifteen (15) months from the date of entry of this Order, Respondent agrees to submit replacement data that meets its reporting obligations for the Relevant Period, in addition to replacement data for self-identified missing or erroneous records brought to the attention of the Staff as

of the date of the filing of this Order. Respondent agrees to contact ODT staff to arrange for scheduling of bulk replacements of data prior to initiating the data transfer.

6. 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 27, 2016