



**II.**  
**FINDINGS**

The Commission finds the following:

**A. SUMMARY**

From at least July 16, 2011, through August 2014, (the “Relevant Period”), HSBC, by and through one of its traders (“Trader A”), engaged in the disruptive trading practice of “spoofing” (bidding or offering with the intent to cancel the bid or offer before execution) with respect to certain futures products in gold and other precious metals (“Precious Metals”) traded on the Commodity Exchange, Inc. (“COMEX”). This spoofing conduct violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).

\* \* \* \* \*

In accepting the Respondent’s Offer, the Commission recognizes the Respondent’s significant cooperation with the Division of Enforcement’s (“Division”) investigation of this matter, which is explained in more detail below. The Commission notes that Respondent’s cooperation and remediation is reflected in the form of a substantially reduced penalty.

**B. RESPONDENT**

HSBC is an indirectly wholly-owned subsidiary of HSBC Holdings PLC, a global banking and financial services company headquartered in London. Throughout the Relevant Period, HSBC maintained its principal office in New York and, in the course of its business activities, traded futures contracts in the United States. HSBC has been registered with the Commission as a futures commission merchant (“FCM”) since 1980.

**C. FACTS**

**1. HSBC’s Disruptive Trading**

During the Relevant Period, a number of traders, including Trader A, were employed in HSBC’s New York office. As part of his duties, Trader A placed orders and entered into transactions for futures contracts in Precious Metals, which were traded on the COMEX, a futures exchange and designated contract market which is owned and operated by CME Group, Inc. (“CME”). Trader A made a market for precious metals derivatives products and traded futures principally to hedge customer orders with the aim of profitably managing his desk’s overall position.

On numerous occasions during the Relevant Period, Trader A placed orders for futures contracts in Precious Metals, primarily gold, with the intent to cancel before their execution. Trader A’s spoofing strategy frequently involved placing a relatively small bid or offer with the

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use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

intent to execute that order (the “Resting Order”) and, prior to the execution of the Resting Order, placing a larger order (or multiple orders), which Trader A intended to cancel before execution, on the opposite side of the same market (the “Spoof Order”). Generally, Trader A would receive a partial or complete fill of the Resting Order and cancel the Spoof Order before it was filled.

## **2. HSBC’s Cooperation and Remediation**

Before and during the course of the Division’s investigation of potential misconduct in the precious metals market, HSBC, and where appropriate its affiliates: conducted an internal review, including analyzing the trading activity of certain traders for potential spoofing misconduct; substantially assisted the Division’s investigation by proactively expanding its internal review; identified Trader A’s misconduct, and promptly reported it to the Division; promptly took appropriate personnel measures with regard to Trader A; and provided important information and analysis to the Division, which helped the Division to efficiently and effectively carry out its investigation.

HSBC has represented that it also initiated an overhaul of its systems and controls and implemented a variety of enhancements to detect and deter similar misconduct. HSBC has further represented that, as part of this process, HSBC revised its policies, updated its training, and updated its electronic monitoring and surveillance practices to detect and deter potential spoofing misconduct and other manipulative trading.

### **III.**

#### **LEGAL DISCUSSION**

##### **A. Spoofing in the Precious Metals Futures Markets, in Violation of Section 4c(a)(5)(C) of the Act**

Section 4c(a)(5)(C) of the Act makes it unlawful for “[a]ny person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that . . . is, is of the character of, or is commonly known to the trade as, ‘spoofing’ (bidding or offering with the intent to cancel the bid or offer before execution).” 7 U.S.C. § 6c(a)(5)(C) (2012); *see also United States v. Coscia*, No. 16-3017, 2017 WL 3381433, at \*7 (7th Cir. Aug. 7, 2017) (holding that because the CEA clearly defines spoofing, it provides adequate notice of prohibited conduct).

As described above, Trader A entered numerous bids or offers on a registered entity with the intent to cancel the bids or offers before execution, in violation of Section 4c(a)(5)(C) of the Act. *See, e.g., In re Posen*, CFTC No. 17-20, 2017 WL 3216576, at \*2 (July 26, 2017) (consent order) (finding that manual trader “entered into thousands of bids or offers on a registered entity with the intent to cancel the bids or offers before execution in violation of Section 4c(a)(5)(C) of the Act”); *CFTC v. Oystacher*, 203 F. Supp. 3d 934, 942 (N.D. Ill. 2016) (denying motion for judgment on the pleadings, holding that allegations of placing “both bids and offers with the intent to cancel those bids or offers before execution” constitutes “trading behavior [that] falls within the Spoofing Statute’s defined prohibition”); *CFTC v. Nav Sarao Futures Ltd.*, No. 15-3398, 2016 WL 8257513, at \*10 (N.D. Ill. Nov. 14, 2016) (consent order) (finding that

defendants engaged in spoofing techniques by, among other things, “plac[ing] tens of thousands of bids and offers for the E-Mini S&P contract with the intent of cancelling those bids and offers before execution (i.e., Spoof Orders”); *CFTC v. Khara*, No. 15-CV-03497, ECF 35 at 6 (S.D.N.Y. Mar. 31, 2016) (consent order) (finding that “Defendants . . . engaged in unlawful disruptive trading practices or conduct in the gold and silver futures markets . . . that were, were of the character of, or were commonly known to the trade as ‘spoofing’ (bidding and offering with the intent to cancel the bid or offer before execution).”).

**B. Respondent HSBC Is Liable for the Acts of Its Agent**

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), provide that “[t]he 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 Commission 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); *CFTC v. Byrnes*, 58 F. Supp. 3d 319, 324 (S.D.N.Y. 2014).

Trader A engaged in the conduct described herein within the course and scope of his employment; therefore, pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2, Respondent is liable for the acts, omissions, and failures of Trader A in violation of the provisions of the Act and Commission Regulations cited above.

**IV.**

**FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that, during the Relevant Period, the Respondent violated Section 4c(a)(5) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).

**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 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 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. pt.148 (2017), 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, §§ 201-53, 110 Stat. 847, 857-74 (codified 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. 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;
- E. Requests, for the reasons set forth in Respondent's letter dated January 18, 2018 ("Request Letter"), that the Commission advise that, under the circumstances, disqualification under Rule 262(a) of Regulation A and Rule 506(d)(1) of Regulation D of the Securities & Exchange Commission ("SEC"), 17 C.F.R. §§ 230.262(a), 230.506(d)(1) (2017), should not arise as a consequence of this Order; and
- F. 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, by and through its agent, Trader A, engaged in spoofing in the futures markets, in violation of Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012);
  2. orders Respondent to cease and desist from violating Section 4c(a)(5)(C) of the Act;
  3. orders Respondent to pay a civil monetary penalty in the amount of one million six hundred thousand dollars (\$1,600,000), plus post-judgment interest within ten (10) days of the date of entry of this Order;

4. orders Respondent and its 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; and
5. advises that, under the circumstances, disqualification under Rule 262(a) of Regulation A and Rule 506(d)(1) of Regulation D of the SEC should not arise as a consequence of this Order.

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

## VI.

### ORDER

**Accordingly, IT IS HEREBY ORDERED THAT:**

- A. Respondent and its successors and assigns shall cease and desist from violating Section 4c(a)(5) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).
- B. Respondent shall pay a civil monetary penalty of one million six hundred thousand dollars (\$1,600,000), within ten (10) days of the date of the 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 --- AMZ 340  
E-mail Box: 9-AMC-AMZ-AR-CFTC  
DOT/FAA/MMAC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
Telephone: (405) 954-7262

If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorn 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. 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 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 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 their agents and/or employees under their authority or control understand and comply with this agreement.
  2. Procedures and Controls To Detect Spoofing Activity: Respondent shall maintain systems and controls reasonably designed to detect spoofing activity by its traders, such as the systems and controls Respondent developed and implemented after the Relevant Period. These systems and controls shall, at a minimum, be designed to detect and generate a report regarding patterns of trading that might constitute spoofing activity in the futures markets. Respondent's personnel shall reasonably promptly review such reports and follow up as necessary to determine whether spoofing activity has occurred.
  3. Training: Respondent shall provide training, at least annually, addressing the legal requirements of the Act with regard to spoofing, manipulation, and attempted manipulation, to be given to all employees trading on behalf of Respondent or other affiliated entities who submit any orders on futures markets, and their supervisors.
  4. Cooperation with the Commission: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, this action. As part of such cooperation, Respondent agrees to:
    - i. 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, including but not limited to audio files, electronic communications, and trading records and data, in the possession, custody, or control of Respondent;
    - ii. comply fully, promptly, completely, and truthfully, subject to any legally

recognized privilege, with any inquiries or requests for information and documents;

- iii. identify and authenticate relevant documents and other evidentiary materials, execute affidavits or declarations, and provide a corporate representative to testify completely and truthfully at depositions, trial, and other judicial proceedings, when requested to do so by the Division's staff;
  - iv. use its best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of Respondent, regardless of the individual's location, and at such a location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such proceeding, trial, or investigation; and
  - v. subject to applicable laws and regulations, use its best efforts to assist in locating and contacting any prior (as of the time of the request) officer, director, employee, or agent of Respondent.
5. 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.
6. 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.

D. Based on the nature of the violations; the findings made, and the sanctions, conditions, and undertakings imposed in the Order; and the facts and representations in Respondent's Request Letter, the Commission advises<sup>2</sup> that, under the circumstances, disqualification under Rule 262(a) of Regulation A and Rule 506(d)(1) of Regulation D of the SEC, 17

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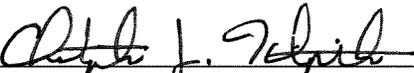
<sup>2</sup> Rule 506(d)(1)(iii)(B) disqualifies an issuer from relying on the private offering exemptions provided for in Rule 506 if they or certain related parties are "subject to a final order of . . . [*inter alia*] the U.S. Commodity Futures Trading Commission . . . that: . . . [c]onstitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct." Rule 506(d)(2)(iii), however, provides that disqualification "shall not apply" if the CFTC "advises in writing" that disqualification under Rule 506(d)(1) "should not arise as a consequence of such order." *See also* 17 C.F.R. §§ 262(a)(3)(ii), (b)(3) (parallel provisions under Regulation A); SEC, Exemptions to Facilitate Intrastate and Regional Securities Offerings, 81 Fed. Reg. 83,494, 83,545 (Nov. 21, 2016) (stating that disqualification under Rule 504 arises "absent a waiver or other exception provided in Rule 506(d)").

C.F.R. §§ 230.262(a), 230.506(d)(1) (2017), should not arise as a consequence of this Order.<sup>3</sup>

The Commission notes that if the facts are different from those represented, or Respondent fails to comply with the terms of the Order, the Commission may, in its discretion, revisit its advice that disqualification should not arise. The Commission reserves the right, in its sole discretion, to withdraw or otherwise revoke or further condition its advice under those circumstances.

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

By the Commission.

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

Dated: January 29, 2018

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<sup>3</sup> In providing this advice, the Commission considered factors similar to those considered by the SEC when it issues waivers of disqualification under Regulation A and Regulation D. The SEC grants waivers where an applicant has shown “good cause and . . . if the [SEC] determines that it is not necessary under the circumstances that an exemption be denied,” 17 C.F.R. §§ 230.262(b)(2), 230.506(d)(2)(ii), based on its analysis of how the identified misconduct bears on the applicant’s fitness to participate in offerings exempted under Regulation A and Regulation D. See SEC, Div. of Corp. Fin., *Waivers of Disqualification Under Regulation A and Rules 505 and 506 of Regulation D*, <https://www.sec.gov/divisions/corpfin/guidance/disqualification-waivers.shtml>; SEC, Div. of Corp. Fin., *Rule 504 of Regulation D: A Small Entity Compliance Guide for Issuers*, <https://www.sec.gov/divisions/corpfin/guidance/rule504-issuer-small-entity-compliance.html>. The SEC considers the following primary factors in determining whether to grant a waiver request: (i) the nature of the violation and whether it involved the offer or sale of securities; (ii) whether the violation required scienter; (iii) who was responsible for the misconduct; (iv) what was the duration of the misconduct; (v) what remedial steps have been taken; and (vi) the impact on the party seeking a waiver and third parties if a waiver is denied. Respondent’s Request Letter addressed these factors in the context of this Order.

The Commission considers these factors in the context of the markets it regulates, and also takes into account whether it determined that a statutory disqualification under the Act should arise solely based on the misconduct found herein and leading to disqualification under Regulation A and Regulation D. The Commission is guided by waivers granted by the SEC in prior cases involving similar facts and circumstances. See, e.g., *In re JPMorgan Chase Bank, N.A.*, Securities Act Release No. 9993, 2015 WL 9256636 (Dec. 18, 2015) (SEC order determining that good cause had been shown that it was not necessary to deny reliance on the exemption under Rule 506 of Regulation D, where disqualification had been triggered by a CFTC order relating to JPMCB’s failure to adequately disclose certain conflicts of interest to clients); *In re UBS AG*, Securities Act Release No. 9787, 2015 WL 2395516 (May 20, 2015) (SEC order determining that good cause had been shown that it was not necessary to deny reliance on the exemption under Rule 506, where disqualification had been triggered by a criminal guilty plea relating to FX benchmark manipulation and noting the entry of parallel CFTC orders); *In re Barclays PLC*, Securities Act Release No. 9786, 2015 WL 2395515 (May 20, 2015) (SEC order determining that good cause had been shown that it was not necessary to deny reliance on the exemption under Rule 506 where disqualification had been triggered by a CFTC order relating to FX benchmark and ISDAFIX manipulation); see also, e.g., *Piper Jaffray & Co.*, SEC No-Action Letter, 2015 WL 4451053 (July 20, 2015) (SEC no-action letter determining that good cause had been shown that it was not necessary to deny reliance on the exemptions under Regulation A and Rule 506 of Regulation D, where disqualification had been triggered by an SEC order, and applying the same factors to consideration of waiver for both exemptions).