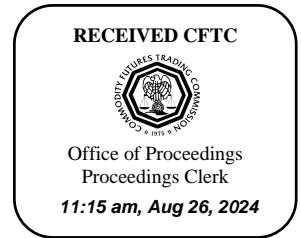


UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION



In the Matter of:)
)
)
The Bank of New York Mellon,)
) **CFTC Docket No. 24-18**
Respondent.)
)
)
)
)

**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 2018 through 2023 (“Relevant Period”), The Bank of New York Mellon (“BNYM” or “Respondent”) violated Sections 2(a)(13)(G), 4r(a)(3), and 4s(h)(1)(B) of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 2(a)(13)(G), 6r(a)(3), 6s(h)(1)(B), and Commission Regulations (“Regulations”) 43.3(a)(1), 45.3(b)(1), 45.3(c), 45.4(a), 45.4(c), 23.402(a)(1)(i), 23.402(a)(2), and 23.602(a), 17 C.F.R. §§ 43.3(a)(1), 45.3(b)(1), 45.3(c), 45.4(a), 45.4(c), 23.402(a)(1)(i), 23.402(a)(2), 23.602(a) (2023), and in doing so also violated a prior Commission order. 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.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Respondent admits the facts set forth in Section II below, acknowledges that their conduct violated the Act and Regulations, and consents 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 acknowledges service of this Order.¹

¹ Respondent consents to the use of the findings of fact and conclusions of law 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 agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does 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 or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not

II. FINDINGS

The Commission finds the following:

A. SUMMARY

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 essential to the effective fulfillment of the regulatory functions of the Commission, including meaningful surveillance and enforcement programs. Moreover, the availability and accuracy of publicly published swap data is key to ensuring transparency into swap transactions, volumes, and pricing on a timely basis.

In 2020, the Commission refined its reporting requirements to ensure the CFTC receives accurate, complete, and high-quality data for swap transactions. The Commission’s reporting framework is critical for both market transparency and the Commission’s risk monitoring and oversight functions. The Commission’s robust enforcement of its swap reporting requirements ensures that the goals of customer protection, market integrity, and the reduction of systemic risk are fully realized.

During the Relevant Period, which spanned an approximately five-year period, BNYM: (i) repeatedly failed to correctly report millions of swap transactions to a registered Swap Data Repository (“SDR”); and (ii) failed to properly supervise its swap dealer business as required by the Act and Regulations. This conduct violated Sections 2(a)(13)(G), 4r(a)(3), and 4s(h)(1)(B) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 6r(a)(3), 6s(h)(1)(B), and Regulations 43.3(a)(1), 45.3(b)(1), 45.3(c), 45.4(a), 45.4(c), 23.402(a)(1)(i), 23.402(a)(2), and 23.602(a), 17 C.F.R. §§ 43.3(a)(1), 45.3(b)(1), 45.3(c), 45.4(a), 45.4(c), 23.402(a)(1)(i), 23.402(a)(2), 23.602(a) (2023).

Many of BNYM’s significant reporting failures also constituted a violation of the Commission’s order against BNYM issued on September 30, 2019. *In re Bank of New York Mellon*, CFTC No. 19-42, 2019 WL 4915489 (Sep. 30, 2019) (consent order) (the “2019 Order”), which ordered BNYM to cease and desist from further violating Sections 2(a)(13)(G) and 4r(a)(3) of the Act and Regulations 43.3 and 45.3. *Id.* at *4.

In addition to the supervision failures reflected in BNYM’s swap data reporting violations, BNYM also failed to properly supervise its business as a Swap Dealer in that BNYM had no written policies or procedures to: (i) monitor the voice communications of its Associated Persons (“APs”); and (ii) monitor the e-communications of its APs that communicated in languages other than English, in order to ensure its APs were complying with the Act and Regulations.

In accepting Respondent’s offer, the Commission recognizes that BNYM self-reported certain of the violations addressed in this Order. The Commission’s recognition of Respondent’s

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.

substantial cooperation is further reflected in the form of a reduced civil monetary penalty. The Commission acknowledges Respondent's representations concerning its remediation of the issues addressed in this matter.

B. RESPONDENT

The Bank of New York Mellon is the world's largest custody bank and asset servicing company. BNYM was provisionally registered as a swap dealer from December 31, 2012 to August 15, 2023, and has been registered as a swap dealer since August 15, 2023. Its swap dealer activity is centered in its Markets Group which offers products including Spot Foreign Exchange ("FX"), Deliverable FX Swaps and Forwards, and Interest Rate Swaps.

C. FACTS

1. Swap Reporting Violations

As described below, during the Relevant Period, BNYM failed to correctly report at least five million swap transactions.

a. FX Swaps

- Failure to report valuation data for thousands of FX swaps, forwards, and non-deliverable forwards from at least 2018 through at least December 2022;
- Failure to accurately report the valuation timestamp when reporting swap continuation data for all FX trades from at least 2018 through 2023;
- Failure to use the correct discount methodology for valuation of all FX trades from at least 2018 through 2023;
- Failure to accurately report the collateralization field for hundreds of FX swaps from at least October 2021 through at least July 2022;
- Failure to report fields for FX swaps from at least 2018 through 2023, specifically:
 - "Trade Party 2 CFTC Financial Entity Status" was not correctly reported or was overridden for BNYM's FX transactions (totaling millions of trades); and
 - "Trade Party 1 U.S. Person" indicator and "Trade Party 2 U.S. Person" indicator were not reported or were overridden for hundreds of thousands of BNYM's FX transactions;
- Failure to link bunched trade allocations to the parent bunched trades (thus, creating "orphan allocations") for thousands of bunched trades from at least April 2019 through at least October 2020; and

- From at least April 2019 through February 2023, BNYM reported more than 7,000 FX bunched trades as FX forwards, notwithstanding that the trades were security conversion transactions that should have been excluded from reporting.

b. Interest Rate Swaps

- Failure to accurately report the collateralization field for thousands of IR swaps from at least October 2021 through at least July 2022;
- Failure to report certain required fields (such as buyer identifier, seller identifier, payer identifier, payment frequency) for 100% of BNYM’s exotic IR trades from at least 2018 through 2022 (totaling hundreds of trades);
- Failure to report fields for IR swaps from at least 2018 through 2023, specifically:
 - “Trade Party 2 CFTC Financial Entity Status” was not reported or was overridden for BNYM’s IR swap transactions (totaling thousands of trades); and
 - “Trade Party 1 U.S. Person” indicator and “Trade Party 2 U.S. Person” indicator were not reported or were overridden for approximately 60% of BNYM’s IR swap transactions (totaling hundreds of trades); and
- Failure to correctly report the latest execution timestamp field when submitting lifecycle events for 100% of BNYM’s IR swap transactions (totaling more than 2,400 trades) from at least 2018 through August 2022.

c. Block Trade Reporting Violations

Between the second quarter of 2019 and June 2020, “Trade Party 2 U.S. Person” indicator was not populated correctly for approximately 48% of BNYM’s block trades (totaling more than 150,000 trades).

d. Position Reconciliation

From December 2022 through May 2023, BNYM only reconciled data reported to the SDR quarterly rather than once every thirty calendar days. From May 2023, BNYM reconciled the trade activity for small number of Total Return Swap transactions against the Depository Trust and Clearing Corporation’s Trade Submission Report and Trade Allege Report; but failed to reconcile its internal books and records against the same.

2. The 2019 Order

The 2019 Order against BNYM found that, from December 31, 2012, through 2018, BNYM failed to properly report hundreds of thousands of swap transactions consistent with the requirements of Sections 2(a)(13)(G) and 4r(a)(3) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 6r(a)(3), and Regulations 43.3 and 45.3, 17 C.F.R. §§ 43.3 and 45.3 (2019). 2019 Order at *1-2.

Consequently, the 2019 Order ordered BNYM to cease and desist from violating these sections of the Act and Regulations and imposed a \$750,000 civil monetary penalty. *Id.* at *4.

3. Supervision Violations

The scope and repetitive nature of BNYM's swap data reporting violations demonstrate that BNYM's supervisory system was inadequate and/or BNYM failed to perform its supervisory duties diligently with respect to its swap data reporting obligations. BNYM failed to fully monitor the e-communications of a small number of APs who were mistakenly placed in a surveillance queue in a jurisdiction other than their home jurisdiction which prevented their communications from being flagged for surveillance by the APs' supervisors. In addition, a substantial percentage of BNYM's APs were based outside of the U.S. and U.K. and/or were communicating in languages other than English in order to conduct BNYM's swap dealer business. Most if not all of BNYM's APs utilized telephonic communications for the same purpose. During the Relevant Period, BNYM had no written policies and procedures in place, including use of a foreign lexicon, for monitoring the e-communications of its non-English speaking APs for compliance purposes. In addition, BNYM had no written policies and procedures in place to monitor the voice communications of its APs for compliance purposes.

4. BNYM's Self-Reporting, Cooperation, and Remediation Efforts

In October 2020, BNYM self-reported to the Commission staff that it had failed to link bunched trade allocations to the parent bunched trades for bunched trades dating back to April 2019. In November 2023, BNYM self-reported to the Commission that it had failed to correctly report the "Trade Party 2 CFTC Financial Entity Status." The remaining issues in the Order were disclosed by BNYM in its annual CCO reports as required by CFTC regulations.

BNYM cooperated extensively and timely with Division of Enforcement ("Division") staff throughout its investigation, expending significant time and resources to provide Division staff with specific and complete information relevant to the Division's investigation. Respondent provided Division staff with detailed written summaries of each issue underlying the Order. Overall, the transparency and responsiveness of BNYM and its counsel resulted in material assistance to the Division that expedited the Division's investigation considerably and served to limit the time and resources expended by Division staff.

In addition to cooperation, BNYM implemented remedial measures to correct the deficiencies in its swap data reporting obligations under Parts 43 and 45 prior to the entry of the Order as described in its annual CCO reports.

In addition, in order to continue to enhance its compliance program and prevent the reoccurrence of misconduct, BNYM voluntarily engaged an independent compliance consultant to review its reporting compliance program and advise regarding the same.

III. LEGAL DISCUSSION

A. **BNYM Violated Sections 2(a)(13)(G) and 4r(a)(3) of the Act and Regulations 43.3(a)(1), 45.3(b)(1), 45.3(c), 45.4(a), and 45.4(c)**

Sections 2(a)(13)(G) and 4r(a)(3) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 6r(a)(3), require reporting of reportable swap transactions to a registered SDR and establish requirements for such reporting. These sections of the Act and the Commission’s implementing regulations in Parts 43 and 45 of the Regulations, 17 C.F.R. pts. 43, 45 (2023), were designed to enhance transparency, promote standardization, and reduce systemic risk. 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 BNP Paribas*, CFTC No. 22-19, 2022 WL 2734273, at *3 (July 5, 2022) (consent order); *In re NatWest Markets Plc*, CFTC No. 18-32, 2018 WL 4502270, at *6 (Sept. 14, 2018) (consent order); *In re Citibank, NA.*, CFTC No. 17-26, 2017 WL 4280594, at *4 (Sept. 25, 2017) (consent order).

Among the requirements of the Act and Regulations related to swap reporting, Part 43 establishes requirements for the real-time reporting and public availability of swap transaction data. *See* Regulations 43.2 and 43.3, 17 C.F.R. §§ 43.2, 43.3 (2023). 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* Regulation 43.3.

Part 45 of the Regulations requires reporting parties to, among other things, report swap creation and continuation data to an SDR. Regulation 45.3, 17 C.F.R. § 45.3 (2023), sets forth the requirements for reporting creation data for the swap. Regulation 45.4, 17 C.F.R. § 45.4 (2023), sets forth the requirements for reporting continuation data for the swap, including all life-cycle-event data and all valuation, margin, and collateral data.

From at least 2018 through 2023, on millions of occasions as described above, BNYM failed to report swap transactions to an SDR consistent with the requirements of Sections 2(a)(13)(G) and 4r(a)(3) of the Act and Regulations 43.3(a)(1), 45.3(b)(1), 45.3(c), 45.4(a), and 45.4(c).² Accordingly, BNYM violated these provisions of the Act and the Regulations.

B. **BNYM Violated the 2019 Order**

The Commission has authority to bring an action for a violation of the 2019 Order under Section 6(c)(4) of the Act, 7 U.S.C. § 9(4). As noted above, Section VI.A of the 2019 Order, effective as of September 30, 2019, ordered BNYM to cease and desist from further violating Sections 2(a)(13)(G) and 4r(a)(3) of the Act and Regulations 43.3 and 45.3. 2019 Order at *4.

² The Commission amended Parts 43 and 45 in 2020, with the new regulations becoming effective on January 25, 2021. *See* Swap Data Recordkeeping and Reporting Requirements, 85 Fed. Reg. 75503 (Nov. 25, 2020); Real-Time Public Reporting Requirements, 85 Fed. Reg. 75422 (Nov. 25, 2020); Certain Swap Data Repository and Data Reporting Requirements, 85 Fed. Reg. 75601 (Nov. 25, 2020). The amendments did not affect the substantive requirements at issue in this order, with one exception—following the effective date of those amendments, “U.S. Person” indicators are no longer required data elements.

As described above, BNYM failed to properly report swap transactions to an SDR in violation of Sections 2(a)(13)(G) and 4r(a)(3) of the Act and Regulations 43.3(a)(1), 45.3(b)(1), and 45.3(c), on millions of occasions after the effective date of the 2019 Order. Therefore, BNYM violated the 2019 Order.³

C. **BNYM Violated Section 4s(h)(1)(B) of the Act and Regulations 23.402(a)(1)(i), 23.402(a)(2), and 23.602(a)**

Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B), and Regulation 23.602(a), 17 C.F.R. § 23.602(a) (2023), require each swap dealer to establish, maintain, and diligently utilize a system to supervise all activities relating to its business performed by its partners, members, officers, employees, and agents that is reasonably designed to ensure compliance with the Act and Regulations. Regulation 23.402(a)(1)(i) and (2), 17 C.F.R. § 23.402(a)(1)(i), (2) (2023), requires each swap dealer to have and monitor compliance with written policies and procedures that are reasonably designed to ensure compliance with the CFTC's business conduct standards, including Regulation 23.410(a), 17 C.F.R. § 23.410(a) (2023), which prohibits fraud, manipulation, and other abusive practices by swap dealers and their APs.

A violation of Regulation 23.602(a) is demonstrated by showing either that: (1) the registrant's supervisory system was generally inadequate; and/or (2) the registrant failed to perform its supervisory duties diligently. *See In re Bank of Nova Scotia*, CFTC No. 20-26, 2020 WL 4926053, at *10 (Aug. 19, 2020) (consent order) (citing *In re Commerzbank AG*, CFTC No. 19-03, 2018 WL 5921385, at *10-11 (Nov. 8, 2018) (consent order)); *In re INTL FCStone Mkts., LLC*, CFTC No. 15-27, 2015 WL 4980321, at *3 (Aug. 19, 2015) (consent order). Evidence of violations that “‘should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly’ is probative of a failure to supervise.” *In re Société Générale Int’l Ltd.*, CFTC No. 19-38, 2019 WL 4915485, at *7 (Sept. 30, 2019) (consent order) (quoting *INTL FCStone Mkts.*, 2015 WL 4980321, at *3).

As described above, BNYM's repeated swap data reporting violations over several years demonstrate that BNYM's supervisory system was generally inadequate and/or BNYM failed to perform its supervisory duties diligently with respect to its swap data reporting obligations. In addition, BNYM's failure to have written policies and procedures in place to monitor the voice communications of its APs and e-communications of its non-English speaking APs as well as its mistaken placement of some APs into in a surveillance queue that prevented their communications from being flagged for surveillance by the APs' supervisors also demonstrate a failure to properly supervise its business as a swap dealer. Therefore, BNYM violated Section 4s(h)(1)(B) of the Act and Regulations 23.402(a)(1)(i), 23.402(a)(2), and 23.602(a).

³ The conduct described herein differs from the conduct described in the 2019 Order in terms of the specific types/fields of swap data that were deficient (e.g., failure to report one leg of an FX swap vs. failure to report valuation data for an FX swap). The conduct described in both of these orders violated Regulations 43.3 and 45.3.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, The Bank of New York Mellon violated Sections 2(a)(13)(G), 4r(a)(3), and 4s(h)(1)(B) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 6r(a)(3), 6s(h)(1)(B), and Regulations 43.3(a)(1), 45.3(b)(1), 45.3(c), 45.4(a), 45.4(c), 23.402(a)(1)(i), 23.402(a)(2), and 23.602(a), 17 C.F.R. §§ 43.3(a)(1), 45.3(b)(1), 45.3(c), 45.4(a), 45.4(c), 23.402(a)(1)(i), 23.402(a)(2), 23.602(a) (2023).

The Commission also finds that, during the Relevant Period, The Bank of New York Mellon violated Section VI.A of the Commission's 2019 Order.

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it knowingly and voluntarily:

- A. Consents to the resolution of this matter in an administrative proceeding;
- B. Admits the findings and conclusions set forth in this Order;
- C. Acknowledges service of this Order;
- D. 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;
- E. Waives:
 - 1. The filing and service of a complaint and notice of hearing;
 - 2. A hearing;
 - 3. All post-hearing procedures;
 - 4. Any and all rights or defenses the Respondent has or might have for the matter to be adjudicated in a federal district court in the first instance, including any associated right to a jury trial;
 - 5. Judicial review by any court;
 - 6. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 - 7. Any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2023), relating to, or arising from, this proceeding;
 - 8. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110

Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and

9. 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, including this Order;
- F. Acknowledges that the Commission is the prevailing party in this action for purposes of the waiver of any and all rights under the Equal Access to Justice Act specified in subpart 7 of Paragraph E of this Section;
- G. 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;
- H. 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 Sections 2(a)(13)(G), 4r(a)(3), and 4s(h)(1)(B) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 6r(a)(3), 6s(h)(1)(B), and Regulations 43.3(a)(1), 45.3(b)(1), 45.3(c), 45.4(a), 45.4(c), 23.402(a)(1)(i), 23.402(a)(2), and 23.602(a), 17 C.F.R. §§ 43.3(a)(1), 45.3(b)(1), 45.3(c), 45.4(a), 45.4(c), 23.402(a)(1)(i), 23.402(a)(2), 23.602(a) (2023);
 2. Makes findings that Respondent violated the 2019 Order;
 3. Orders Respondent to cease and desist from violating the 2019 Order;
 4. Orders Respondent to cease and desist from violating Sections 2(a)(13)(G), 4r(a)(3), and 4s(h)(1)(B) of the Act and Regulations 43.3(a)(1), 45.3(b)(1), 45.3(c), 45.4(a), 45.4(c), 23.402(a)(1)(i), 23.402(a)(2), and 23.602(a), in the manner described in Sections II.C.1 and II.C.3 herein; and
 5. Orders Respondent to pay a civil monetary penalty in the amount of five million dollars (\$5,000,000), plus post-judgment interest, within ten days of the date of entry of this Order; and
- I. Represents that it has remediated the problems that gave rise to the violations that are the subject 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 the 2019 Order.

- B. Respondent and its successors and assigns shall cease and desist from violating Sections 2(a)(13)(G), 4r(a)(3), and 4s(h)(1)(B) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 6r(a)(3), 6s(h)(1)(B), and Regulations 43.3(a)(1), 45.3(b)(1), 45.3(c), 45.4(a), 45.4(c), 23.402(a)(1)(i), 23.402(a)(2), and 23.602(a), 17 C.F.R. §§ 43.3(a)(1), 45.3(b)(1), 45.3(c), 45.4(a), 45.4(c), 23.402(a)(1)(i), 23.402(a)(2), 23.602(a) (2023), in the manner described in Sections II.C.1 and II.C.3 herein.
- C. Respondent shall pay a civil monetary penalty in the amount of five million dollars (\$5,000,000) (“CMP Obligation”), within ten (10) days of the date of 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 unpaid portion of 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.

Respondent shall pay the CMP Obligation and any post-judgment interest 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:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact the Federal Aviation Administration at the above email 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.

- D. 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 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 comply with this agreement, and 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, in General: 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.
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 calendar days of the change.
5. Notices: Until such time as Respondent satisfies in full its CMP Obligation, upon the commencement by or against Respondent of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Respondent's debts, all notices to creditors required to be furnished to the Commission under Title 11 of the United States Code or other applicable law with respect to such insolvency, receivership bankruptcy or other proceedings, shall be sent to the address below:

Secretary of the Commission
Office of the General Counsel
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington, D.C. 20581

6. Independent Compliance Consultant: Respondent has voluntarily selected and engaged an Independent Compliance Consultant ("Consultant") for the purpose of conducting a review and advising Respondent regarding Respondent's implementation of the remediation-related undertakings described in this Order, to specifically address and reduce the risk of any recurrence of Respondent's misconduct as set forth in the Order.

Respondent shall submit a written certification to the Division of its selection and that the Consultant has demonstrated to the Respondent that the Consultant has, at

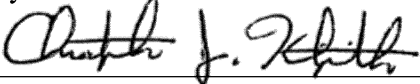
minimum, the following qualifications: (1) demonstrated expertise with respect to the Act and Regulations, and in particular Sections 2(a)(13)(G), 4r(a)(3), and 4s(h)(1)(B) of the Act and Regulations 43.3(a)(1), 45.3(b)(1), 45.3(c), 45.4(a), 45.4(c), 23.402(a)(1)(i), 23.402(a)(2), and 23.602(a); (2) a thorough understanding of swaps data reporting and supervision; (3) experience designing and/or reviewing corporate compliance policies, procedures, and internal controls; (4) the ability to access and deploy resources as necessary to discharge the Consultant's duties as described in this Section; and (5) sufficient independence from Respondent to ensure effective and impartial performance of the Consultant's duties. In the certification, Respondent shall summarize the bases for its certification.

The Consultant shall conduct a review of the Respondent's policies, procedures, and controls relating to Sections 2(a)(13)(G), 4r(a)(3), and 4s(h)(1)(B) of the Act and Regulations 43.3(a)(1), 45.3(b)(1), 45.3(c), 45.4(a), 45.4(c), 23.402(a)(1)(i), 23.402(a)(2), and 23.602(a), and prepare a written report for the benefit of the Respondent within one hundred fifty (150) calendar days of entry of this Order, setting forth the Consultant's assessment and, if necessary making recommendations reasonably designed to improve the effectiveness of Respondent's swap data reporting and supervision regimes. The Consultant should consult with the Respondent on its recommendations on an ongoing basis.

Within one hundred eighty (180) calendar days of the entry of this Order, Respondent shall make a written report to the Commission ("Report") through the Division of Enforcement ("DOE") and the Market Participants Division ("MPD") providing an update on Respondent's remediation of the issues addressed in the Order. The Report shall include the steps taken to implement the recommendations of the Consultant. To the extent any recommendation has not been fully implemented by Respondent, the Report shall attest Respondent's reasons for not fully implementing the recommendation and any alternate steps taken to address the underlying issue. In submitting the Report, Respondent, through its Chief Compliance Officer and another senior officer at BNYM, shall certify those recommendations fully implemented and any ongoing recommended remediation. Respondent shall notify the Commission when the remediation of all issues is complete.

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: August 26, 2024