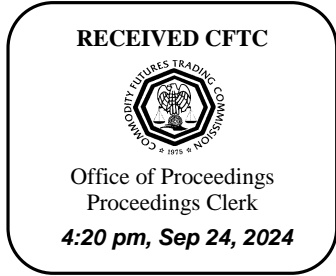


UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION



_____)
In the Matter of:)
)
Canadian Imperial Bank of)
Commerce) CFTC Docket No. 24-29
)
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 January 2017 to the present (“Relevant Period”), Canadian Imperial Bank of Commerce (“CIBC” or “Respondent”) violated, as set forth below, Sections 2(a)(13)(F) and (G) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 2(a)(13)(F), (G), and current Commission Regulations (“Regulations”) 43.3(a), 45.3(b)(1), and 45.4(c), 17 C.F.R. §§ 43.3(a), 45.3(b)(1), 45.4(c) (2023), as well as former Commission Regulations 43.3(a), 43.4(a), 45.3(b) and 45.4, 17 C.F.R. §§ 43.3(a), 43.4(a), 45.3(b), 45.4 (2020).¹ 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 its conduct violated the Act and Regulations and consents to the entry of this Order Instituting Proceedings Pursuant

¹ The Commission amended Parts 43 and 45 of the Regulations on November 25, 2020. These amendments became effective January 25, 2021, but compliance was not required until May 25, 2022. 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). These amendments had an implementation date of May 25, 2022, and further there was a no-action letter providing relief, which extended the implementation date until December 5, 2022. See CFTC Letter No. 22-03, No-Action, January 31, 2022.

to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.²

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 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.

As a registered swap dealer, CIBC is required to comply with certain requirements related to reporting its swap transactions to a swap data repository (“SDR”). The Act requires all swaps, both cleared and uncleared, to be reported to a registered SDR and establishes requirements for real-time reporting and public availability of swap transaction data. *See* Section 2(a)(13)(F), (G) of the Act, 7 U.S.C. §§ 2(a)(13)(F), (G). Section 2(a)(13)(F) and (G) of the Act requires (1) 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, and (2) all swaps, both cleared and uncleared, to be reported to a registered SDR. During the Relevant Period, CIBC was untimely in reporting its swap transactions to an SDR, resulting in significant violations of the Act and Regulations. These reporting failures were widespread and impacted thousands of swaps transactions and resulted in violations of Regulations 43.3(a), 45.3(b)(1), and 45.4(c).

In accepting Respondent’s Offer, the Commission recognizes the substantial cooperation of CIBC with the Division of Enforcement’s (“Division”) investigation of this matter. The Commission also acknowledges Respondent’s representations concerning its remediation in connection with this matter. The Commission’s recognition of Respondent’s substantial cooperation, and representations regarding remediation is further reflected in the form of a substantially reduced penalty.

² Respondent agrees to the use of the findings of fact and conclusions of law in this Order in this proceeding and any other proceeding brought by the Commission or to which the Commission is a party or claimant, including but not limited to, a proceeding in bankruptcy or receivership, 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 consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

B. RESPONDENT

Canadian Imperial Bank of Commerce is an international banking and financial services corporation headquartered in Toronto, Ontario. CIBC was provisionally registered with the Commission as a swap dealer since December 31, 2012, and is currently registered as a swap dealer.

C. FACTS

1. CIBC's Reporting Failures

During the Relevant Period, CIBC was late in reporting various types of data for its swaps transactions, including real time, primary economic terms ("PET"), confirmation, snapshot and valuation data.³ CIBC consistently reported swap data outside the time requirements prescribed by Parts 43 and 45 of the Regulations with respect to millions of required reports. The untimeliness of CIBC's swaps reporting was pervasive over the course of the Relevant Period and impacted thousands of swaps.

For example, based on sample testing, in 2018 and 2019, CIBC reported real time data for its swaps transactions late at least 25% of the time, although the regulations required that such data be reported "as soon as technologically practicable." *See* Regulation 43.2, 17 C.F.R. § 43.2 (2023). PET data in that same timeframe was reported late approximately 10-20% of the time, and was reported on average one day late during that timeframe.

The timeliness issues were even more pervasive for other types of required data: for example, confirmation data was reported late approximately 60% of the time in 2018 and 54% of the time in 2019, while valuation data was late approximately 68% of the time in 2018 and 30% of the time in 2019. Although CIBC represented that it improved the timeliness of its reporting after 2019, and that by 2021 the percentages of late reports had dropped significantly, a smaller number of violations have continued to the present.

2. Respondent's Substantial Cooperation and Remediation

In 2019, the National Futures Association conducted an exam of CIBC and identified swaps reporting timeliness problems, including CIBC's failure to timely report swap creation and continuation data, including PET messages, valuation data and confirmation data. Following the exam, CIBC took steps to remediate these issues in 2020, but an analysis by CIBC in November 2020 revealed that untimeliness problems persisted. CIBC immediately conducted further testing and concluded in mid-December 2020 that its swaps reporting continued to be untimely. CIBC then voluntarily made a report to the Division of Enforcement (the "Division") staff regarding its swaps reporting failures, and in January 2021, the CFTC began its investigation into CIBC's swaps reporting.

³ As discussed in Section III, *infra*, the November 25, 2020 amendments to the swap reporting rules modified terminology used to describe certain categories of data.

Following the bank’s report to the Division and throughout the investigation, CIBC engaged in open communication with the Division, performed significant analyses of the bank’s swaps reporting problems, provided written responses to questions posed by the Division, and voluntarily disclosed new issues to the Division as they arose during the course of the investigation. CIBC’s cooperation materially advanced the Division’s investigation by allowing the Division to conserve substantial resources. CIBC also represented that it engaged in efforts to remediate the timeliness issues, including retaining a consultant, conducting extensive historical analysis, and devoting significant resources to remedial efforts.

III. LEGAL DISCUSSION

A. CIBC’s Failure to Report Swaps Timely

The Act states that, with regard to real-time data, “[p]arties to a swap . . . shall be responsible for reporting swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.” Section 2(a)(13)(F) of the Act, 7 U.S.C. § 2(a)(13)(F). The Act also requires data for each swap (whether cleared or uncleared) to be reported to a registered SDR. Section 2(a)(13)(G) of the Act, 7 U.S.C. § 2(a)(13)(G). Pursuant to these requirements, the Commission adopted implementing swaps data reporting regulations, which apply to Respondent in its capacity as a registered swap dealer.

Part 43 of the Regulations, 17 C.F.R. pt. 43 (2023), establishes requirements for the real-time public reporting and public availability of swap transaction and pricing data. Specifically, Regulation 43.3(a)(1) states that “[a] reporting counterparty . . . shall report . . . publicly reportable swap transaction[s] to a[n] . . . [SDR] as soon as technologically practicable after execution.”⁴ Regulation 43.3(a)(1), 17 C.F.R. § 43.3(a)(1) (2023).⁵

Under former Regulation 43.4(a), “[s]wap transaction and pricing information shall be reported to a registered swap data repository so that the registered swap data repository can publicly disseminate swap transaction and pricing data in real-time” 17 C.F.R. § 43.4(a) (2020).⁶

Regulation 45.3 requires the reporting of required swap creation data, which includes several fields as specified in Appendix 1 to Part 45, depending on the asset class of the swap.

⁴ The phrase “as soon as technologically practicable” means “as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants.” Regulation 43.2, 17 C.F.R. § 43.2 (2023). Moreover, in the preamble to the initial Part 43 rulemaking, the Commission acknowledged that swap dealers are “more likely to have the infrastructure to report their swap transaction and pricing data to an SDR faster than other categories of market participants.” Real-Time Public Reporting of Swap Transaction Data, 77 Fed. Reg. 1182, 1191 (Jan. 9, 2012).

⁵ Regulation 43.3(a)(1) imposed the same substantive obligation for a reporting counterparty to report as soon as technologically practicable after execution prior to its amendment effective January 25, 2021. See 17 C.F.R. § 43.3(a)(1) (2020).

⁶ The current version of Regulation 43.4(a) states “[a]ny swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall publicly disseminate the information described in appendix A of this part for the swap transaction and pricing data” Accordingly, CIBC is charged with violations of only the former version of Regulation 43.4(a) for conduct occurring during the Relevant Period before January 25, 2021.

See 17 C.F.R. §§ 45.1, 45.3, Appendix 1 (2023). Specifically, Regulation 45.3(b)(1) requires that swap dealers report swap creation data “not later than the end of the next business day following the execution date.”⁷

Regulation 45.4 requires the reporting of required swap continuation data, which as defined in Regulation 45.1, includes “all of the data elements that must be reported during the existence of a swap to ensure that all swap data concerning the swap in the [SDR] remains current and accurate,” including life cycle event data and valuation data. See 17 C.F.R. §§ 45.1, 45.4 (2023). Regulation 45.4(c) provides that swap dealers must generally report life cycle data no later than the end of the next business day and valuation data each business day. 17 C.F.R. § 45.4(c) (2023).⁸

These swap data reporting regulations “were designed to enhance transparency, promote standardization, and reduce systemic risk.” *In re ED&F Man Capital Mkts., Ltd.*, CFTC No. 22-13, 2022 WL 827785, at *5 (Mar. 15, 2022) (consent order) (quoting *In re Mizuho Capital Mkts. LLC*, CFTC No. 21-17, 2021 WL 4501467, at *9 (Sept. 27, 2021) (consent order)). “Market participants rely upon the public availability of swap data for price discovery purposes.” *In re Morgan Stanley Capital Servs. LLC*, CFTC No. 20-78, 2020 WL 5876732, at *4 (Sept. 30, 2020) (consent order) (citations omitted). “The accuracy and completeness of swap reporting are critical to the Commission’s mission to protect market participants and to ensure market integrity.” *CFTC v. Deutsche Bank*, 16-cv-6544 (WHP), 2020 WL 4611985, at *8 (S.D.N.Y. June 17, 2020) (citing *In re Société Générale Int’l Ltd.*, CFTC No. 19-38, 2019 WL 4915485, at *6 (Sept. 30, 2019) (collecting cases)). See also, *In re NatWest Markets Plc*, CFTC No. 18-32, 2018 WL 4502270, at *2 (Sept. 14, 2018) (consent order); *In re Citibank, NA.*, CFTC No. 17-26, 2017 WL 4280594, at *2 (Sept. 25, 2017) (consent order). The Commission, in turn, requires complete and accurate reporting data to engage in meaningful oversight of the swaps market. *Id.*

During the Relevant Period, as set forth in Section II.C of this Order, Respondent failed to report swap data on time, resulting in over a million errors impacting thousands of swaps. As a result, Respondent violated Section 2(a)(13)(F) and (G) of the Act, and current Regulations 43.3(a), 45.3(b)(1), and 45.4(c), as well as former Regulations 43.3(a), 43.4(a), 45.3(b) and 45.4. See, e.g., *In re BNP Paribas*, CFTC No. 22-19, 2022 WL 2734273, at * 2 (July 5, 2022) (consent order) (millions of errors resulting in violations of Regulations 43.3 and 45.3); *ED&F Man*, 2022 WL 827785, at *5 (hundreds of thousands of errors resulting in violations of, *inter alia*, Regulations 43.3(a), 43.4, 45.3, 45.4, and 45.6); *Mizuho*, 2021 WL 4501467, at *9 (more than one hundred thousand errors resulting in violations of, *inter alia*,

⁷ Former Regulations 45.3 and 45.1 referred to PET and confirmation data as components of required swap creation data. 17 C.F.R. §§ 45.3, 45.1 (2020). The current version eliminates these references and definitions because “[t]he definitions are unnecessary due to the Commission combining PET data and confirmation data into a single data report in [the new version of] § 45.3.” Swap Data Recordkeeping and Reporting Requirements, 85 Fed. Reg. 75503, 75508 (Nov. 25, 2020). The former version of Regulation 45.3 also generally required swap dealers to report swap creation data “as soon as technologically practicable.” See *id.* at 75510, 17 C.F.R. § 45.3(b) (2020).

⁸ Under former Regulation 45.4, the types of data required to be reported were similar, and included life cycle and valuation data. See 17 C.F.R. § 45.4 (2020); Swap Data Recordkeeping and Reporting Requirements, 85 Fed. Reg. 75503, 75512-16. The former version also required certain life cycle data to be reported the same day rather than the next business day, or T+1. *Id.*

Regulations 43.3(a), 43.4, 45.3, and 45.4); *Morgan Stanley*, 2020 WL 5876732, at *2, 4 (approximately three million errors resulting in violations of, *inter alia*, Regulations 43.3(a), 45.3, 45.4, and 45.6).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, CIBC violated Sections 2(a)(13)(F) and (G) of the Act, 7 U.S.C. §§ 2(a)(13)(F), (G), and current Regulations 43.3(a), 45.3(b)(1), and 45.4(c), 17 C.F.R. §§ 43.3(a), 45.3(b)(1), 45.4(c) (2023), as well as former Regulations 43.3(a), 43.4(a), 45.3(b) and 45.4, 17 C.F.R. §§ 43.3(a), 43.4(a), 45.3(b), 45.4 (2020).

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. Acknowledges service of this Order;
- C. Admits the facts described in Section II above and acknowledges that its conduct violated the Act and Regulations;
- 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 that 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. Agrees for purposes of the waiver of any and all rights under the Equal Access to Justice Act specified in paragraph E.7 above, that it is not the prevailing party in this action;
- 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 CIBC violated Sections 2(a)(13)(F) and (G) of the Act, 7 U.S.C. §§ 2(a)(13)(F), (G), and current Regulations 43.3(a), 45.3(b)(1), and 45.4(c), 17 C.F.R. §§ 43.3(a), 45.3(b)(1), 45.4(c) (2023), as well as former Regulations 43.3(a), 43.4(a), 45.3(b) and 45.4, 17 C.F.R. §§ 43.3(a), 43.4(a), 45.3(b), 45.4 (2020);
 2. Orders CIBC to cease and desist from violating Sections 2(a)(13)(F) and (G) of the Act, and Regulations 43.3(a), 45.3(b)(1), and 45.4(c);
 3. Orders Respondent to pay a civil monetary penalty in the amount of one million two hundred fifty thousand US dollars (\$1,250,000), plus any post-judgment interest within fourteen days of the date of entry of this Order; and
 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.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. CIBC and its successors and assigns shall cease and desist from violating Sections 2(a)(13)(F) and (G) of the Act, 7 U.S.C. §§ 2(a)(13)(F), (G), and Regulations 43.3(a), 45.3(b)(1), and 45.4(c), 17 C.F.R. §§ 43.3(a), 45.3(b)(1), 45.4(c) (2023).
- B. Respondent shall pay a civil monetary penalty in the amount of one million two hundred fifty thousand US dollars (\$1,250,000) (“CMP Obligation”), within fourteen days of the date of the entry of this Order. If the CMP Obligation is not paid in full within fourteen 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
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, CIBC 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.

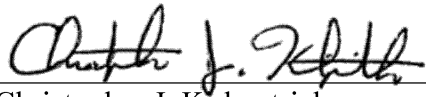
- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or 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: (1) testimonial obligations; or (2) 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, the subject matter of 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.

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.

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

By the Commission.



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

Dated: September 24, 2024