

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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10:04 am, Jul 18, 2019

In the Matter of:)

Swapnil Rege,)

Respondent.)

) CFTC Docket No. 19-14
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**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 in or about June 2016 through April 2017 (“Relevant Period”), Swapnil Rege (“Respondent”) violated Section 6(c)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a)(1)–(3), 17 C.F.R. § 180.1(a)(1)–(3) (2018), of the Commission Regulations (“Regulations”) promulgated thereunder. 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. Without admitting or denying any of the findings or conclusions herein, Respondent 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 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.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Respondent engaged in a fraudulent scheme to mismark the valuations for certain interest rate swaps on the books of his employer, a commodity pool operator (“CPO”) located in Connecticut and registered as such with the Commission. Respondent mismarked the valuations in an attempt to artificially inflate the profits of the CPO, in order to meet performance metrics that would qualify Respondent for an (artificially inflated) performance bonus. As discussed in further detail below, Respondent mismarked the interest rate swaps on the books of the CPO by editing default discount curves in the software used by the CPO to value its swaps, as well as changing other settings in order to create fictitious profits. As a result of the mismarking scheme, Respondent caused the CPO to overstate its reported performance to pool participants, which in turn resulted in overstated management fees. The valuations could not be and were not realized by the CPO.

Respondent engaged in numerous steps to conceal his misconduct, including by: (i) obtaining written verifications of his fraudulent marks from swap dealers by instructing them to use off-market forward curves—and then concealing those instructions when providing the verifications to the CPO’s back office (accounting and/or operations staff); and (ii) manipulating the split of spreads and fees assigned to the various legs of packaged swaps transactions to make it appear that swaps were unwound close to his fictitious marks. Respondent also engaged in efforts to persuade management of the CPO, as well as the CPO’s outside auditor, that his marks were not fraudulent—despite knowing that they were unsupportable.

The CPO ultimately terminated Respondent, liquidated its commodity pools, restated the pools’ valuations, and reimbursed excessive fund management fees attributable to Respondent’s mismarking scheme.

B. RESPONDENT

Swapnil Rege was a Portfolio Manager on the U.S. Rates Desk at the CPO from June 2015 until his termination in April 2017. Rege has never been registered with the Commission in any capacity.

C. OTHER RELEVANT ENTITIES

The CPO is a Delaware limited liability company with a principal place of business in Darien, Connecticut. During the Relevant Period, the CPO was registered with the Commission as a CPO. The CPO operated several commodity pools during the Relevant Period.

D. FACTS

Respondent was hired as a consultant by the CPO in March 2015. In June 2015 Respondent was promoted to a full-time employee as Portfolio Manager over the U.S. Rates

Desk. The terms of the management of the commodity pools were set forth in a private placement memorandum and other documents.

At the time Respondent was hired, the CPO primarily invested in structured products such as mortgage-backed and other asset-backed securities, and fixed income instruments. The CPO typically entered into interest rate swaps and other derivatives for hedging purposes. Respondent was hired to engage in a new primary investment strategy of interest rate swap trading (i.e., trading to earn profits by entering into interest rate swaps, as well as swaptions and other related instruments, rather than for hedging purposes). Pursuant to his agreement with the CPO, Respondent was paid a base salary of \$150,000, and was entitled to a performance bonus of 8% of the CPO's net profits generated by his trading. Respondent was the primary trader for this new strategy.

Initially, these swaps and related instruments were valued on the CPO's books by marking them on a day-to-day basis using a valuation model for each instrument. Doing so requires that the economic terms of each instrument be manually input by the trader (here, Respondent), although some terms (such as forward curves) were set to defaults by the CPO's settings in the valuation model. Until the summer of 2016, these model valuations would at month-end be updated and reconciled with the valuations provided by the CPO's prime broker for each of the various instruments. In June 2016, the CPO experienced several discrepancies between its end-of-day marks (derived from its valuation model) and its month-end marks (derived from counterparty statements). As a result, the CPO evaluated alternative methods for valuing its swap and related positions, ultimately determining to use the valuation model to mark the positions on both a daily and monthly basis. In fact, Respondent's mismarking contributed to the discrepancies noticed by the CPO.

Respondent's mismarking was accomplished in several ways. Because the CPO used the valuation model to mark its swap and other related instruments during the Relevant Period (first for daily marks, and then at some point in the summer of 2016 for month-end marks as well), by manipulating the settings of that model Respondent was able to create fictitious profits. First, and most significantly, Respondent was able to assign different discount curves to swaps and swaptions with identical or substantially similar terms depending on whether the CPO was paying or receiving the fixed leg of the swap, or whether the CPO was long or short the swaption. There was no economic justification for Respondent's use of different discount curves for valuing similar instruments. The resulting mismatch in discount curves for otherwise offsetting or nearly-offsetting positions created fictitious profits in the model used by the CPO to value its swaps that did not reflect the actual value the swaps could realize if unwound. Second, Respondent used incorrect day count settings for fixed and floating legs of some swaps and swaptions in order to reduce the model value of future payments by the CPO or increase the model value of future payments to the CPO, resulting in fictitious profits that would never actually be realized by the CPO.

Respondent concealed his mismarking scheme in several ways. First, when the CPO's management sought to confirm the validity of using marks based on the valuation model, Respondent asked his counterpart traders at swap dealers used by the CPO to provide him with quotes to verify the model valuations. Respondent would typically do this through the chat function of the Bloomberg terminal, and would provide either a screenshot or a copy of the chat

to the CPO's back-office staff. However, Respondent would conceal—either by omitting segments of the chat or by deleting relevant text—that he had provided off-market forward rates for the counterparty traders to use in calculating the quotes. Respondent knew that the information he was omitting was material, and that by omitting it he created the false impression that the broker quotes supported his fraudulent valuations.

A second technique used by Respondent to conceal his fraud was to structure the unwind of certain trades in packages where he could instruct the counterparty to assign fees and premiums to particular legs of the trade in such a way as to make it appear that certain positions unwound at valuations close to those provided by the valuation model. For example, Respondent mismarked one trade using different discount curves to create a net present value of approximately \$22.7 million. When instructed to unwind the trade at the end of March 2017, Respondent negotiated with his counterparty to replace the trade—contrary to instructions not to enter into new trades—with a new one that had a +68 basis point spread on it. This spread was matched with a payment of \$22.7 million to the CPO on the unwound trade—an amount that approximated the inflated value on the CPO's books. In reality, however, this payment did not result from profitable trading; instead, Respondent had built-in a loss on the new trade that offset the fictitious profit on the unwound trade.

Respondent also engaged in other conduct intended to conceal his mismarking from the CPO, including providing purported justifications to the CPO's management and its auditor for his use of differing discount curves for otherwise similar trades. Indeed, Respondent falsely told the CPO that the use of differing discount curves for similar trades was an accepted practice that led to more accurate valuations. Respondent also blamed user error (his own) for some of his other alterations to default settings (like day counts).

Respondent's mismarking created fictitious profits for fiscal year 2016 in the CPO's valuation model, which resulted in Respondent being paid an unjustified partial performance bonus of \$600,000 on December 31, 2016 (his remaining bonus payment was deferred until after completion of the annual audit).

Ultimately, Respondent was confronted by the CPO regarding his mismarking after the unwind trade discussed above failed to clear. Respondent was terminated by the CPO on April 25, 2017; as a result, the remainder of his unjustified performance bonus was never paid.

III. LEGAL DISCUSSION

Under Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), it is unlawful for any person, directly or indirectly, to use or employ in connection with, as relevant here, any swap, any manipulative or deceptive device or contrivance, in violation of Regulation 180.1, 17 C.F.R. § 180.1 (2018). Regulation 180.1(a)(1)–(3), in relevant part, makes it unlawful for any person, directly or indirectly, in connection with any swap, to intentionally or recklessly (1) use or employ or attempt to use or employ any manipulative device, scheme, or artifice to defraud; (2) make or attempt to make any untrue or misleading statement or omission of material fact; or (3) engage or attempt to engage in any act or practice, which operates or would operate as a fraud or deceit on any person.

Mismarking internal books to reflect fictitious profits or conceal losses constitutes fraudulent conduct under the Act and Regulations, as does concealing such conduct through false and misleading statements. *See, e.g., In re Bourne*, CFTC No. 18-51, 2018 WL 4862368 (Sept. 28, 2018) (consent order) (finding violations of Section 6(c)(1) and Regulation 180.1(a) where respondent internally mismarked the valuation of inflation swap instruments to disguise significant trading losses); *CFTC v. Brooks*, No. 13-C-6879(KMW), 2014 WL 4443446, at *4–5 (S.D.N.Y. Aug. 1, 2014) (consent order) (finding violations of Sections 4b and 6(c)(1) of the Act and Regulation 180.1(a) when defendant mismarked internal books and records to inflate the profitability of futures positions).

As set forth above, Respondent violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1)–(3) because he intentionally or recklessly, in connection with certain interest rate swaps and swaptions that he traded on behalf of the CPO: (1) used or employed a manipulative device, scheme, or artifice to defraud; (2) made untrue or misleading statements of material fact or omitted to state material facts necessary in order to make the statements made not untrue or misleading; and (3) engaged in acts, practices, or courses of business which operated as a fraud or deceit on the CPO. By this conduct, Respondent violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1)–(3).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Swapnil Rege violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a)(1)–(3), 17 C.F.R. § 180.1(a)(1)–(3) (2018).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which he, without admitting or denying the findings and conclusions herein:

- A. Acknowledges 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 he 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 Regulations, 17 C.F.R. pt. 148 (2018), relating to, or arising from, this proceeding;
 7. Any and all claims that he 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
 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, including this Order;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents 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 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a)(1)–(3), 17 C.F.R. § 180.1(a)(1)–(3) (2018);
 2. Orders Respondent to cease and desist from violating Section 6(c)(1) of the Act and Regulation 180.1(a)(1)–(3);
 3. Orders Respondent to pay a civil monetary penalty in the amount of one hundred thousand dollars (\$100,000) (“CMP Obligation”), within fourteen days of the date of entry of this Order;
 4. Orders that Respondent be prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012)), for a period of: (a) at least three years after the date of entry of this Order; and (b) until after payment and satisfaction in full of the Disgorgement Obligation and the CMP Obligation and any applicable interest, and all registered entities shall refuse him trading privileges during that period; and
 5. Orders Respondent to comply with the conditions and undertakings consented to in the Offer and as set forth in Section VI of this Order, including payment of disgorgement of \$600,000 plus prejudgment interest in the amount of \$49,170.84.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondents shall cease and desist from violating Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a)(1)–(3), 17 C.F.R. § 180.1(a)(1)–(3) (2018).
- B. Respondent shall pay a civil monetary penalty in the amount of one hundred thousand dollars (\$100,000) (“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 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 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 181
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne 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, and to the Deputy Director, Enforcement, Eastern Region Office, Commodity Futures Trading Commission, 140 Broadway, New York, New York 10005.

- C. Respondent is prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012)), for a period of: (a) at least three years after the date of entry of this Order; and (b) until after payment and satisfaction in full of the Disgorgement

Obligation and the CMP Obligation and any applicable interest, and all registered entities shall refuse him trading privileges during that period; and

- D. Respondent shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither he nor any of the agents or employees under his 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 shall comply with this agreement, and shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement.
 2. Respondent agrees that he shall not, for a period of: (a) at least three years after the date of entry of this Order, and (b) until after full payment and satisfaction of the Disgorgement Obligation and the CMP Obligation and any applicable interest, directly or indirectly:
 - a. enter into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2018)), for Respondent's own personal account or for any account in which Respondent has a direct or indirect interest;
 - b. have any commodity interests traded on Respondent's behalf;
 - c. control or direct the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
 - d. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests;
 - e. apply for registration or claim exemption from registration with the Commission in any capacity, or engage in any activity requiring such registration or exemption from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2018); and/or
 - f. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2018)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)), registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9).

3. Disgorgement: Respondent agrees to pay disgorgement in the amount of six hundred thousand dollars (\$600,000.00), plus pre-judgment interest in the amount of forty-nine thousand, one hundred and seventy dollars and eighty-four cents (\$49,170.84), for a total of six hundred and forty-nine thousand, one hundred and seventy dollars and eighty-four cents (\$649,170.84) (“Disgorgement Obligation”), representing the gains received in connection with such violations. Payments shall be made as follows: (1) two hundred thousand dollars (\$200,000) within fourteen days of the date of the entry of this Order; and (2) four hundred forty-nine thousand, one hundred and seventy dollars and eighty-four cents (\$449,170.84), within 360 days of the date of the entry of this Order. If the Disgorgement Obligation is not paid in full within 360 days of the date of entry of this Order, then post-judgment interest shall accrue on the Disgorgement 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).

Payment, up to the amount of six hundred and forty-nine thousand, one hundred and seventy dollars and eighty-four cents (\$649,170.84), made by the Respondent in satisfaction of the disgorgement order entered in the *Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8a of the Securities Act of 1933, Section 21c of the Securities Exchange Act of 1934, and Section 203(E) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist* (“SEC Order”), in the proceeding captioned *In the Matter of Swapnil Rege*, brought by the Securities and Exchange Commission (including payments to an escrow account as provided in the SEC Order) shall offset (dollar-for-dollar) Respondent’s Disgorgement Obligation identified herein.

Any payment of Respondent’s Disgorgement Obligation and any post-judgment interest to the CFTC hereunder shall be made 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 181
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

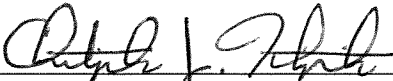
If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment

instructions and shall fully comply with those instructions. Respondent shall accompany payment of the Disgorgement 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, and to the Deputy Director, Enforcement, Eastern Region Office, Commodity Futures Trading Commission, 140 Broadway, New York, New York 10005.

- E. 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.
- F. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation or Disgorgement Obligation shall not be deemed a waiver of his 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.
- G. Change of Address/Phone: Until such time as Respondent satisfies in full his CMP Obligation and Disgorgement Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to his 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: July 18, 2019