

**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**

\_\_\_\_\_ )  
)  
**In the Matter of:** )

**The Northern Trust Company,** )

**Respondent.** )

) **CFTC Docket No. 19-39** )  
)  
)  
)  
\_\_\_\_\_ )

**RECEIVED CFTC**



Office of Proceedings  
Proceedings Clerk  
**7:22 pm, Sep 30, 2019**

**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 2013 through at least 2018 (the “Relevant Period”), The Northern Trust Company (“Northern Trust,” “Respondent,” or the “Bank”) violated Sections 2(a)(13) and 4r(a)(3) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 2(a)(13), 6r(a)(3) (2012), and Commission Regulations (“Regulations”) 43.3, 45.3, and 45.4, 17 C.F.R. § 43.3, 45.3, 45.4 (2019), and Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B) (2012), and Regulation 23.602, 17 C.F.R. § 23.602 (2019). 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 Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.<sup>1</sup>

---

<sup>1</sup> 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 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, 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

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 thus essential to effective fulfillment of the regulatory functions of the Commission, including meaningful surveillance and enforcement programs.

During the Relevant Period, Northern Trust failed to report hundreds of thousands of swaps to a swap data repository ("SDR") consistent with the requirements of the Act and Regulations. These swap reporting failures were a direct result of the failure of Northern Trust to adequately supervise its swap dealer, including failing to hire qualified subject matter experts to ensure swap dealer compliance.

In accepting Respondent's Offer of Settlement, the Commission recognizes Northern Trust's substantial cooperation during the Division of Enforcement's ("Division") investigation of this matter. The Commission notes that Northern Trust's cooperation and remediation are recognized in the form of a substantially reduced civil monetary penalty.

### B. RESPONDENT

Northern Trust is an Illinois banking corporation, provisionally registered as a swap dealer ("SD") with the Commission on April 30, 2013.

### C. FACTS

#### 1. Northern Trust's Failure To Report Swap Transactions to an SDR

Northern Trust, as an SD, was a reporting counterparty required to report certain data about its swaps transactions to an SDR. *See* Sections 2(a)(13)(G) and 4r(a)(3) of the Act, 7 U.S.C. § 2(a)(13)(G), 6r(a)(3) (2012); Regulations 43.3, 45.3, and 45.4 17 C.F.R. §§ 43.3, 45.3, 45.4 (2019).

During the Relevant Period, Northern Trust did not implement sufficient processes and controls to ensure that all of its SDR reporting was accurate and complete.

As a result of these control failures, Northern Trust on hundreds of thousands of occasions failed to report certain swap transactions to an SDR consistent with the requirements of Section 2(a)(13)(G) and 4r(a)(3) of the Act and Regulations 43.3, 45.3, and 45.4.

From 2013 through at least 2018, Northern Trust routinely failed to report interest rate derivatives trades as required by the Act and Regulations. The reporting failures included failing to provide real-time reports, failing to report required life-cycle events (such as full or partial

trade termination), failing to report primary economic terms, and failing to provide accurate confirmation data.

From at least 2015 through at least 2018, Northern Trust reported incorrect execution times for hundreds of thousands of swaps. This occurred because Northern Trust lacked the technological ability to report execution times by trading venue and, instead of upgrading its technology, reported the time at which its systems recorded the trade, which often was later than the execution time.

From 2015 through at least 2017, Northern Trust failed to timely report thousands of foreign exchange (“FX”) swap transactions.

From 2017 through at least 2018, Northern Trust reported the two legs of FX swap transactions as if they were separate transactions (and did not report that these two legs constituted a single swap transaction).

From 2015 through at least 2018, for trades involving allocation, Northern Trust failed to report thousands of initial swap transactions (it reported the allocated swaps but not the initial transaction).

Northern Trust’s swap reporting was also deficient in other ways during the Relevant Period.

Northern Trust’s SDR reporting failures violated Section 2(a)(13)(G) and 4r(a)(3) of the Act and Regulations 43.3, 45.3, and 45.4.

## **2. Northern Trust’s Inadequate Supervision of Its Swap Dealer**

During the Relevant Period, Northern Trust management routinely failed to supervise its SD’s activities, in violation of Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B) (2012), and Regulation 23.602, 17 C.F.R. § 23.602 (2019).

Beginning with the inception of the SD in 2013, Northern Trust failed to adequately ensure the SD’s compliance with the Act and Regulations. This failure was especially notable with respect to swap reporting, where the SD’s failure to devote adequate attention and resources to reporting solutions resulted in a variety of different reporting problems. Contributing to the failure to supervise was that Northern Trust repeatedly hired compliance personnel for the SD who possessed some financial industry and regulatory experience, but lacked the specific technical expertise necessary to ensure SD compliance.

This failure to supervise the SD resulted in hundreds of thousands of violations of the Act and Regulations.

### **3. Northern Trust's Cooperation with the Division of Enforcement's Investigation**

Throughout the Division's investigation, Northern Trust provided substantial cooperation. Among other things, Northern Trust conducted an internal investigation and provided specific and detailed information to the Division regarding the reporting deficiencies its internal investigation revealed. Northern Trust also retained outside consultants to review its swap dealer's processes and procedures. In addition, Northern Trust has hired new personnel to oversee compliance at its swap dealer and has taken substantial steps to improve its processes for swap reporting going forward.

## **III. LEGAL DISCUSSION**

### **A. Northern Trust's Failure To Report Swap Transactions to an SDR Violated Sections 2(a)(13)(G) and 4r(a)(3) of the Act and Regulations 43.3, 45.3, and 45.4**

Sections 2(a)(13)(G) and 4r(a)(3) of the Act, 7 U.S.C. § 2(a)(13)(G), 6r(a)(3) (2012), requires that swaps, both cleared and uncleared, be reported to a SDR, and establishes 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 (2019), 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 Ice Futures U.S.*, CFTC No. 15-17, 2015 WL 1276463 (Mar. 16, 2015) (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 (2019). Regulation 43.3 requires that reporting parties must report a publicly-reportable swap transaction to a SDR as soon as technologically practicable after the swap transaction is executed.

Part 45 of the Regulations requires reporting parties to, among other things, report swap creation data to a SDR. Regulation 45.3, 17 C.F.R. § 45.3 (2019), sets forth the requirements for reporting creation data, including primary economic terms data and confirmation data. *See* 17 C.F.R. § 45.3(b), (c). Regulation 45.4 sets forth requirements for continuation data reporting, which includes reporting of required life-cycle events. *See* 17 C.F.R. § 45.4.

From 2013 through 2018, Northern Trust experienced recurring issues with SDR reporting and 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, 45.3, and 45.4.

### **B. Northern Trust's Inadequate Supervision of Its Swap Dealer Violated Section 4s(h)(1)(B) of the Act and Regulation 23.602**

Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B) (2012), requires "diligent supervision of the business of the registered swap dealer." Regulation 23.602, 17 C.F.R.

§ 23.602 (2019), requires that SDs and major swap participants “establish and maintain a system to supervise, and shall diligently supervise, all activities relating to its business performed by its partners, members, officers, employees, and agents (or persons occupying a similar status or performing a similar function).”

The operative language of Regulation 23.602 (governing SDs and major swap participants), is similar to the language of the Commission’s longstanding supervision regulation for futures and options, Regulation 166.3, 17 C.F.R. § 166.3 (2019). Under Regulation 166.3, when a registrant’s supervisory system is generally inadequate, or the registrant fails to perform its supervisory duties diligently, that fact alone is sufficient to establish a violation of the supervision requirement. *See, e.g., In re Murlas Commodities, Inc.*, CFTC No. 85-29, 1995 WL 523563, at \*9 (Sept. 1, 1995); *In re Paragon Futures Ass’n*, CFTC No. 88-18, 1992 WL 74261, at \*14 (Apr. 1, 1992). 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. *Paragon Futures*, 1992 WL 74261, at \*14.

From the swap dealer’s inception until at least 2017, Northern Trust failed to hire SD compliance personnel with adequate subject matter expertise. As a result, throughout the Relevant Period, Northern Trust’s management failed to diligently supervise the SD. The failure had a systemic impact on Northern Trust’s swaps operations and occurred over a long period of time. Management’s failure to supervise the SD directly resulted in violations of other provisions of the Act and accompanying Regulations. Accordingly, Northern Trust’s conduct violated Section 4s(h)(1)(B) of the Act and Regulation 23.602.

### **C. Northern Trust’s Liability for the Acts of Its Employees**

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 (2019), provide that the 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 Regulation 1.2, strict liability is imposed on principals for the actions of their agents. *See, e.g., Dohmen-Ramirez & Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988); *Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986).

The foregoing acts, omissions, and failures of Northern Trust’s employees occurred within the scope of their employment, office, or agency with Northern Trust; therefore, pursuant to Section 2(a)(1)(B) of the Act, and Regulation 1.2, Northern Trust is liable for those acts, omissions, and failures in violation of the Act and Regulations.

## **IV. FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that Respondent violated Sections 2(a)(13) and 4r(a)(3) of the Act, 7 U.S.C. §§ 2(a)(13), 6r(a)(3) (2012), and Regulations 43.3, 45.3 and 45.4, 17 C.F.R. § 43.3, 45.3, 45.4 (2019), and Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B) (2012), and Regulation 23.602, 17 C.F.R. § 23.602 (2019).

## 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 to all the matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on a 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 Regulations, 17 C.F.R. pt. 148 (2019), 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, ("SBREFA"), Pub. L. No. 104-121, tit. II, §§ 201-253, 110 Stat 847-74 (codified as amended 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 upon 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 Respondent has consented in the Offer; and
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
  - 1. Makes findings by the Commission that Respondent violated Sections 2(a)(13) and 4r(a)(3) of the Act, 7 U.S.C. §§ 2(a)(13), 6r(a)(3) (2012), and Regulations 43.3, 45.3 and 45.4, 17 C.F.R. §§ 43.3, 45.3, 45.4 (2019), and Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B) (2012), and Regulation 23.602, 17 C.F.R. § 23.602 (2019); and

2. Orders Respondent to cease and desist from violating Sections 2(a)(13) and 4r(a)(3) of the Act and Regulations 43.3, 45.3, and 45.4 and Section 4s(h)(1)(B) of the Act and Regulation 23.602; and
3. Orders Respondent to pay a civil monetary penalty in the amount of one million dollars (\$1,000,000), plus post-judgment interest within ten 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 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. Respondent shall cease and desist from violating Sections 2(a)(13) and 4r(a)(3) of the Act, 7 U.S.C. §§ 2(a)(13), 6r(a)(3) (2012), and Regulations 43.3, 45.3, and 45.4 17 C.F.R. §§ 43.3, 45.3, 45.4 (2019), and Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B) (2012), and Regulation 23.602, 17 C.F.R. § 23.602 (2019).
- B. Respondent shall pay a civil monetary penalty in the amount of one million dollars (\$1,000,000), (“CMP Obligation”). If the CMP Obligation is not paid in full within ten days of the date of entry of the Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of the Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of the Order pursuant to 28 U.S.C. § 1961 (2012).

Respondent shall pay the CMP Obligation 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, Respondent shall make the payment 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 facsimile  
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic 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 Respondent and the name and docket number of this proceeding. Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

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

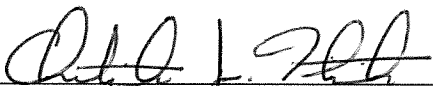
1. Remediation: Respondent will continue to implement and improve its internal controls and procedures in a manner reasonably designed to ensure the accuracy and integrity of its swaps reporting, to remediate the currently known swap reporting deficiencies that are the subject matter of this Order. Specifically, Respondent undertakes to:
  - a. Enhance Respondent's supervisory program, policies, procedures and controls in a manner reasonably designed to ensure compliance with the reporting requirements of Section 2(a)(13) and 4r(a)(3) of the Act and Parts 43 and 45 of the Regulations, 17 C.F.R. pts. 43, 45 (2019); and,
  - b. Provide additional training to relevant personnel on the reporting requirements of Section 2(a)(13) and 4r(a)(3) of the Act and Parts 43 and 45 of the Regulations.
2. Compliance with Undertakings: Within 120 days of the entry of this Order, Respondent shall make a report to the Division explaining its progress towards compliance with the Undertakings set forth herein. Within one year of the entry of this Order, Respondent shall submit a report to the Division, explaining how it has complied with the Undertakings set forth herein. The report shall attach copies of and describe the internal controls, policies and procedures that have been designed and implemented to satisfy the Undertakings, along with a report on the status of the remediation efforts.
3. Public Statements: Respondent agrees that neither it nor any of its successors or 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 factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.



- D. Cooperation, in General: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto for a period of three years. As part of such cooperation, Respondent agrees to:
1. 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, subject to applicable laws and regulations, in the possession, custody, or control of Respondent;
  2. accept service by mail, electronic mail, or facsimile transmission of notices or subpoenas for documents and/or testimony at depositions, hearings, or trials;
  3. appoint Respondent's attorney as agent to receive service of such notices and subpoenas; and
  4. waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules in connection with requests or subpoenas of the Division's staff.
- E. 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.

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

By the Commission.

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

Dated: September 30, 2019