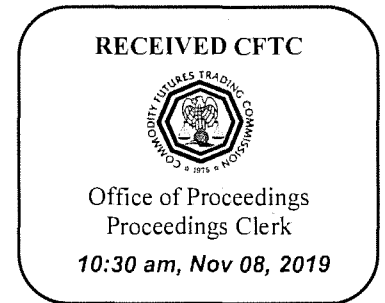


UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of: )  
)  
Wells Fargo Bank, N.A., )  
)  
Respondent. ) CFTC Docket No. 20 – 08  
)  
)  
\_\_\_\_\_)



**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 August 2014 through May 2018 (the “Relevant Period”) Wells Fargo Bank, N.A. (“Wells Fargo” or “Respondent”) violated Section 4s(h)(1)(B) and (3)(C) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6s(h)(1)(B), (3)(C) (2012), and Commission Regulations (“Regulation”) 23.402(a)(1)(i) and (2) and 23.433, 17 C.F.R. §§ 23.402(a)(1)(i), (2), 23.433 (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 has engaged in the violations as set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of this 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 and 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.<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 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 entered into a foreign exchange (“FX”) forward contract with a counterparty to exchange USD \$4 billion for CAD \$4.347 billion. The forward contract settled in December 2014 and coincided with the closing date of the counterparty’s acquisition of a Canadian company. Respondent agreed with its counterparty that the four-month forward transaction for \$4 billion USD/CAD would be priced at the weighted average spot rate, plus an adjustment, of the CAD Respondent acquired in the spot market on August 27, 2014. Respondent and the counterparty agreed to evenly split “the upside” from the trade if the average spot rate Respondent was able to execute exceeded a certain level.

Respondent did not have a system in place to accurately track trades used to fill the counterparty’s order. Rather than calculate the agreed upon weighted average price—as represented by Respondent—Respondent instead picked a rate it believed would be in the range of the true weighted average and thus acceptable to the counterparty. Respondent also provided the counterparty with a spreadsheet that Respondent claimed calculated the true weighted average. However, the spreadsheet did not reflect actual trades on behalf of the counterparty because Respondent lacked the ability to track trades related to the counterparty’s transaction.

Respondent also did not implement procedures designed to ensure that accurate information was provided to the counterparty. As a result of this failure, as well as the failure to track counterparty-related trades, Respondent provided misinformation to the counterparty regarding the timing of the accumulation of the spot CAD, the prices of the spot CAD trades that filled the order, when the order was ultimately filled, and whether Respondent profited from options related to the counterparty’s order. Respondent’s supervisory systems were inadequate to ensure implementation and monitoring of compliance with policies and procedures regarding communication with counterparties in a fair and balanced manner throughout the Relevant Period. Respondent failed to cure these deficiencies until May 2018.

### B. RESPONDENT

**Wells Fargo Bank, N.A.** has its main office in Sioux Falls, South Dakota, and has been provisionally registered as a swap dealer (“SD”) since December 31, 2012.

### C. FACTS

In 2014, Wells Fargo and one of its counterparties had discussions over the course of several months about Wells Fargo financing the counterparty’s acquisition of a Canadian company. The counterparty also inquired about a strategy for hedging its exposure to exchange rate fluctuations prior to closing its acquisition of the Canadian company.

Bankers at Wells Fargo referred the counterparty to the FX team. Respondent and the counterparty ultimately entered into a four-month forward contract on August 27, 2014, with a settlement price that would be based on the weighted average rate of CAD spot contracts that Respondent agreed to purchase on behalf of the counterparty on August 27, 2014.

The parties also agreed to a pricing component that involved a “cap.” The cap would be determined from the spot price of CAD at the time Respondent commenced trading on August 27, plus a risk adjustment of fifty-five “pips.”<sup>2</sup> If the weighted average rate was above the price cap, the parties would split “the upside” equally. On the other hand, if the weighted average rate was below the cap, Respondent would assume the downside risk on the transaction.

Respondent’s employees, including senior members of the FX management team, were aware that the deal required Respondent to provide a weighted average rate based on actual spot trades. However, as a result of not having an adequate trade tracking system in place, Respondent failed to record which trades were placed for the counterparty, and thus could not produce an accurate weighted average. Instead, Respondent provided the counterparty with a weighted average rate of 1.0851, which Respondent believed would be a good fill for the counterparty and which was within the general range of the true weighted average. A later reconstruction of the trading by Respondent revealed that the actual weighted average rate for the spot trades was closer to 1.08532, or 2.2 pips higher than the provided rate.

The counterparty agreed to enter into the forward contract with Respondent at around 1:16 pm (EDT) on August 27. A short time later, Respondent informed the counterparty that spot trading had begun at 1:20 pm (EDT). However, Respondent had actually started spot trading CAD approximately two hours earlier, even before the counterparty had agreed to enter into the forward contract with Respondent. That trading was at a more favorable starting price than quoted to the counterparty and was used to fill the counterparty’s order. Again, because Respondent’s trade tracking system was inadequate, none of this information was communicated to the counterparty.

Respondent also failed to accurately communicate to the counterparty regarding when it had finished accumulating spot CAD. The last such communication occurred at approximately 3:00 pm (EDT) on August 27, 2014, when Respondent sent an e-mail to the counterparty informing it that trading was done and that Respondent would have final numbers for the counterparty shortly. However, because Respondent did not have a trade tracking system in place, Respondent did not know that it had not yet acquired \$4 billion USD/CAD to complete the transaction with the counterparty.

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<sup>2</sup> A pip, short for “point in percentage,” is a small measure of change in the price of a currency pair in the forex market. It can be measured in terms of the quote or in terms of the underlying currency. A pip is a standardized unit and is the smallest amount by which a currency quote can change. It is usually \$0.0001 for U.S.-dollar related currency pairs, which is more commonly referred to as 1/100th of 1%, or one basis point.

Furthermore, during a September 3, 2014, telephone call, despite inquiries from the counterparty concerning Respondent's pre-trade option activity, a sales specialist for Respondent only mentioned a "small protective hedge" of two-day options, while failing to communicate to the counterparty that Respondent had executed one additional CAD option in excess of its hedge. The sales specialist also failed to disclose to the counterparty that Respondent earned a profit on the options activity.

Respondent failed to communicate in good faith with the counterparty by failing to provide accurate information regarding when the spot CAD was accumulated, including when and at what price the trading commenced, when it finished trading, and information regarding trading engaged in prior to, and contemporaneously with, the forward contract transaction. Respondent failed to have policies and procedures in place to ensure that the accumulation of the spot CAD on behalf of the counterparty was both automatically tracked and accurately calculated. Compounding those failures, Respondent lacked policies and procedures sufficient to ensure that those failures were identified and corrected. Respondent's risk management and supervisory structure lacked independence from Respondent's trading function. Only when informed by the counterparty of irregularities did Respondent seek to investigate and remedy its violations. Respondent failed to remedy its supervision failures until May 2018.

Upon discovery, Respondent conducted an internal investigation and provided specific and detailed information to the Division of Enforcement ("Division") regarding the supervision and communications deficiencies its internal investigation revealed, which materially assisted the Division's investigation. Respondent ultimately terminated the employees responsible for the failures associated with the transaction and eventually implemented a substantial plan to remediate these deficiencies and improve the supervision and communications processes for its SD.

### III. LEGAL DISCUSSION

Pursuant to Section 1a(47)(E)(iv) of the Act, "any party to a foreign exchange swap or forward that is a swap dealer. . . shall conform to the business conduct standards contained in section 4s(h)." 7 U.S.C. § 1a(47)(E)(iv) (2012). Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B) (2012), provides that registered swap dealers shall conform with business conduct rules or regulations prescribed by the Commission that, *inter alia*, relate to diligent supervision of the business of the registered swap dealers. In addition, Section 4s(h)(3)(C) of the Act, 7 U.S.C. § 6s(h)(3)(C) (2012), provides that "[b]usiness conduct requirements adopted by the Commission shall . . . establish a duty for a swap dealer or major swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith." Accordingly, Regulation 23.402(a)(1)(i) and (2) requires swap dealers to have written policies and procedures reasonably designed to ensure compliance with business conduct standards. 17 C.F.R. § 23.402(a)(1)(i), (2) (2019). Further, Regulation 23.433 requires SDs to communicate with their counterparties in a fair and balanced manner based on principles of fair dealing and good faith. 17 C.F.R. § 23.433 (2019).

During the Relevant Period, Respondent failed to maintain supervisory systems

adequate to ensure implementation and monitoring of compliance with policies and procedures regarding business conduct standards. Respondent failed to communicate with its counterparty in a fair and balanced manner, by (1) failing to calculate the agreed-upon weighted average price, and instead picking a rate that it thought the counterparty would accept; (2) providing a spreadsheet calculating the price for the spot trades that did not accurately reflect the trades entered into on behalf of the counterparty because Respondent was unable to track the actual trades on behalf of the counterparty; and (3) providing inaccurate information about when Respondent started and stopped making spot trades and the price of the initial trade used to fill the order.

As such, Respondent's conduct described above violated its duty of fair dealing and good faith in violation of Section 4s(h)(1)(B) and (3)(C) of the Act, and Regulations 23.402(a)(1)(i) and (2) and 23.433.

#### **IV. FINDINGS OF VIOLATION**

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Section 4s(h)(1)(B), (3)(C) of the Act and Regulations 23.402(a)(1)(i) and (2), and 23.433.

#### **V. OFFER OF SETTLEMENT**

Respondent has submitted the Offer in which it:

- 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 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, Pub. L. No. 104-121, §§ 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 Respondent has consented in the Offer;
- 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 4s(h)(1)(B) and (3)(C) of the Act, 7 U.S.C. § 6s(h)(1)(B), (3)(C) (2012), and Regulations 23.402(a)(1)(i) and (2), and 23.433 (2019);
  2. orders Respondent to cease and desist from violating Section 4s(h)(1)(B) and (3)(C) of the Act and Regulations 23.402(a)(1)(i) and (2) and 23.433;
  3. orders Respondent to pay \$4.47 million (\$4,470,000) in restitution, which is deemed satisfied by payments in the amount of \$4.47 million (\$4,470,000) already made to the counterparty;
  4. orders Respondent to pay a civil monetary penalty in the amount of ten million dollars (\$10,000,000) within fifteen business days of the date of entry of this Order, plus post-judgment interest; and
  5. 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. Respondent shall cease and desist from violating Section 4s(h)(1)(B) and (3)(C) of the Act, 7 U.S.C. § 6s(h)(1)(B), (3)(C) (2012), and Regulations 23.402(a)(1)(i) and (2), and 23.433, 17 C.F.R. §§ 23.402(a)(1)(i), (2), 23.433 (2019).
- B. Respondent shall pay restitution in the amount of \$4.47 million (\$4,470,000.00) (“Restitution Obligation”). The ordered Restitution Obligation is deemed satisfied by payments in the amount of \$4.47 million (\$4,470,000) already made to the counterparty.
- C. Respondent shall pay a civil monetary penalty in the amount of ten million dollars (\$10,000,000) within fifteen business days of the date of the entry of this Order (the “CMP Obligation”). If the CMP Obligation is not paid in full within fifteen business days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

Respondent shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made by other than electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

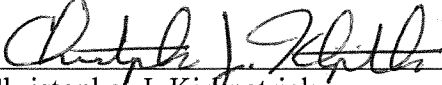
MMAC/ESC/AMK326  
Commodity Futures Trading Commission  
Division of Enforcement  
6500 S. MacArthur Blvd.  
HQ Room 181  
Oklahoma City, OK 73169  
(405) 954-6569 (office)  
(405) 954-1620 (fax)  
9-AMC-AR-CFTC@faa.gov

If payment is 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 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.

- D. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements:** Respondent and 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 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. **Partial Satisfaction:** Respondent understands and agrees that any acceptance by the Commission of partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, and shall not be deemed a waiver of the Commission's right to seek to compel payment of any remaining balance.
  3. **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 on this date.**

By the Commission

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

Dated: November 8, 2019