

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

_____)
In the Matter of:)

BGC Financial, LP,)

Respondent.)
 _____)

CFTC Docket No. 20-09

RECEIVED CFTC



Office of Proceedings
 Proceedings Clerk

9:05 am, Nov 22, 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 BGC Financial, L.P. (“BGC”) has violated Sections 4g and 4d(d) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6g, 6d(d) (2012), and Commission Regulations (“Regulations”) 1.12(l)-(m), 1.31(b)(4) and (d)(2)-(3), 1.35(a)(1)(i) and (iii), (a)(5) and (b)(1), 3.3(d)(3)-(5), (e)(5), and (g), and 166.3, 17 C.F.R. §§ 1.12(l)-(m), 1.31(b)(4), (d)(2)-(3), 1.35(a)(1)(i), (iii), (a)(5), (b)(1), 3.3(d)(3)-(5), (e)(5), (g), 166.3 (2019). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether BGC 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, BGC has submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, BGC 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 BGC 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. BGC 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. BGC does not consent to the use of the Offer or of 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

From at least 2014 to March 2019 (“Relevant Period”), BGC, a registered futures commission merchant (“FCM”), failed to establish an adequate supervisory system and diligently perform its supervisory duties with respect to its traditional and block trading futures brokerage businesses. BGC’s failure to supervise contributed to BGC’s other violations, specifically, BGC’s failure to create, maintain, and promptly produce audit trail and other business-related documents, failure to notify or timely notify the Commission of a change in its senior management and of formal investigations and exams by other regulatory bodies, and failure to comply with its Chief Compliance Officer (“CCO”) obligations and reporting.

By virtue of this conduct, BGC engaged in acts and practices that violated Sections 4g and 4d(d) of the Act, 7 U.S.C. §§ 6g, 6d(d) (2012), and Regulations 1.12(l)-(m), 1.31(b)(4) and (d)(2)-(3), 1.35(a)(1)(i) and (iii), (a)(5) and (b)(1), 3.3(d)(3)-(5), (e)(5) and (g), and 166.3, 17 C.F.R. §§ 1.12(l)-(m), 1.31(b)(4), (d)(2)-(3), 1.35(a)(1)(i), (iii), (a)(5), (b)(1), 3.3(d)(3)-(5), (e)(5), (g), 166.3 (2019).

B. RESPONDENT

BGC Financial, L.P. is, among other things, a futures industry voice broker. BGC is headquartered in New York, with branch offices throughout the country. BGC has been registered with the Commission as an FCM since January 2009. BGC is also a registered broker-dealer.

C. FACTS

1. **BGC Failed To Comply with Recordkeeping Obligations and To Promptly Provide Documents.**

During the Relevant Period, BGC failed to create and maintain records as required under Section 4g of the Act, 7 U.S.C. § 6g (2012), and Regulation 1.35, 17 C.F.R. § 1.35 (2019). Further, BGC failed to provide requested records promptly in violation of Regulation 1.31, 17 C.F.R. § 1.31 (2019).

a. **BGC Had Recordkeeping Failures.**

During the Relevant Period, BGC had several voice recording and retention failures. In its traditional and block trading futures brokerage businesses, BGC brokers both screen and block trades. The audit trail for a majority of these trades includes a voice component. On multiple occasions during the Relevant Period, BGC failed to record or retain voice recordings. As a result, BGC failed to capture verbal bids, offers, orders, and other important trade communications for periods of up to four months; and on at least four such occasions, multiple broker lines were simultaneously impacted. Most significantly, BGC lost all voice recordings from February 5, 2016, through the end of May 2016, for thousands of trades brokered by its

Sugar Land, Texas (“Sugar Land”) block trading desks, which accounted for approximately half of all BGC’s block trades during that time.

BGC did not require brokers to prepare written order tickets for brokered block trades. Instead, BGC primarily relied on electronic communications, voice recordings, and electronic trade record systems to satisfy its audit trail obligations under the Act and Regulations. However, BGC’s systems did not create a written record of order receipt time as required under Regulation 1.35.

In late 2016, the Commission’s Division of Enforcement (“Division”) requested that BGC produce audit trail for 100 random block trades brokered by BGC during the prior twelve months. BGC produced complete audit trail for less than half of these trades due to missing voice recordings and its inability to locate trade related documentation.

In addition, in response to Division requests, BGC could not produce copies of certain agreements with its clearing firm or copies of give-up screening agreements with its customers’ clearing firms.

b. BGC Failed To Promptly Produce Documents to the Division.

BGC failed to promptly produce audit trail requested by the Division. BGC took more than two months to complete an initial production of audit trail for the 100 random block trades requested by the Division due to its difficulty identifying and compiling the audit trail. BGC’s failure to keep a separate written record reflecting order receipt time for brokered block trades exacerbated production delays because BGC had to review voice recordings and/or electronic communications in an attempt to provide this information.

Additionally, BGC took months to produce a complete customer list to the Division and was delayed in producing to the Division a complete trade blotter for its traditional futures desks due to exporting systems issues. BGC also took more than six months to produce to the Division backup documentation for its CCO annual reports. This documentation is required to be maintained and readily accessible under Regulation 3.3(g), 17 C.F.R. § 3.3(g) (2019), and is subject to prompt production on request under Regulation 1.31.

2. BGC Failed To Comply with FCM-Specific Requirements.

During the Relevant Period, BGC failed to comply with Regulations applicable to FCMs², as follows:

² BGC does not function as an FCM, insofar as it does not accept customer funds. However, during the Relevant Period, BGC was registered as an FCM and as such was required to comply with Regulations applicable to this registration status.

a. BGC Failed To File and Timely File Notifications with the Commission.

During the Relevant Period, BGC failed to notify the Commission of numerous formal investigations by regulatory entities related to trade reporting and supervision issues. Regulation 1.12(m), 17 C.F.R. §1.12(m) (2019), required BGC to notify the Commission of these investigations, but it failed to do so or to timely do so. Additionally, Regulation 1.12(l), 17 C.F.R. § 1.12(l) (2019), required BGC to notify the Commission of changes in its senior management, but it failed to timely notify the Commission of such a change in 2017.

Since Regulation 1.12(m) became effective in January 2014, BGC entered into at least eight settlements with the Financial Industry Regulatory Authority (“FINRA”) and settled CME Group, Inc. (“CME”), ICE Futures U.S., Inc. (“ICE”), and Nodal Exchange, LLC (“Nodal”) matters, for which no notices of the investigations were ever filed with the Commission. During its 2016 exam, National Futures Association (“NFA”) notified BGC that it needed to file Regulation 1.12 notifications. In response, BGC filed its 2014 and 2015 FINRA cycle exam reports with the Commission, but later committed other violations of this Regulation. Specifically, BGC filed copies of its 2016 and 2017 FINRA cycle exam reports with the Commission several weeks late and filed notice of its 2017 change in CEO over nine months late. BGC also failed to timely notify the Commission of a Securities & Exchange Commission (“SEC”) investigation that resulted in a \$1.25 million settlement for willful books and records violations. Despite knowing it was under formal investigation by the SEC since at least early 2014, BGC did not notify the Commission of the investigation until after the SEC’s settlement order was entered over four years later, on July 17, 2018.

b. BGC Failed To Comply with CCO Obligations and Reporting.

BGC failed to take reasonable steps to ensure compliance with the Act and Regulations and failed to adequately disclose to the Commission BGC’s material noncompliance issues and how remediation efforts were related to those issues as required by Regulation 3.3.

i. BGC Failed To Take Reasonable Steps To Ensure Compliance.

BGC failed to take reasonable steps to ensure compliance with the Act and Regulations and failed to take reasonable steps to ensure establishment of written policies and procedures reasonably designed to remediate noncompliance issues, as required by Regulation 3.3(d). BGC’s written policies that mirrored language in the Act and Regulations were insufficient to ensure BGC’s compliance with the Act and Regulations. BGC did not have written procedures reasonably designed for dealing with all noncompliance issues. Further, when noncompliance issues occurred, BGC did not take reasonable steps to create and implement policies and procedures related to the remediation of those issues.

BGC failed to take reasonable steps to ensure compliant recordkeeping and proper handling of notifications to the Commission. Additionally, BGC did not take reasonable steps to ensure proper and timely reporting of block trades.

As described above, during the Relevant Period, BGC had several voice recording failures. BGC did not have a sufficient process in place to test for successful capture and

retention of voice communications across all of its traditional and block trading futures brokerage desks. Additionally, BGC lacked sufficient information about and access to voice recording systems to allow effective detection of voice recording failures. Accordingly, BGC failed to take sufficient steps to detect and prevent BGC's voice recording issues. Upon learning of these repeated voice recording failures, BGC also failed to meaningfully alter its policies and procedures to prevent or detect future failures.

Further, BGC had insufficient processes to ensure prompt identification and retrieval of audit trail as required by the Act and Regulations. BGC's deficiencies were demonstrated when BGC took more than two months to produce available audit trail for the 100 trades requested by the Division. Upon learning of these deficiencies, BGC also failed to meaningfully alter its policies and procedures.

ii. BGC Inadequately Disclosed Material Noncompliance Issues and Remediation Efforts in Its CCO Reports.

As an FCM, BGC was required to submit annual CCO reports to the Commission discussing its FCM operations and compliance with the Act and Regulations. The Commission's Division of Swap Dealer and Intermediary Oversight ("DSIO") relies upon CCO reports when assessing a firm's compliance with the Act and Regulations. BGC submitted a CCO report for the 2015 calendar year on or about March 29, 2015 ("2015 Report"), an amended CCO report for the 2015 calendar year on or about September 20, 2016 ("2015 Amended Report"), and a CCO report for the 2016 calendar year on or about March 30, 2017 ("2016 Report," together with the 2015 Report and 2015 Amended Report, the "CCO Reports"). The CCO Reports included a section describing any material noncompliance issues the firm experienced over the course of the reporting period and the remedial efforts taken by the firm to address such issues.

BGC failed to adequately disclose material noncompliance issues and its remedial efforts to address such issues in its CCO Reports as required by Regulation 3.3(e)(5). Specifically, BGC failed to adequately disclose material noncompliance issues related to voice audit trail capture and retention. BGC also failed to sufficiently detail the connection of these issues to remediation efforts described in the reports. As a result, BGC's noncompliance issues and its remediation efforts could not be accurately evaluated by the Commission.

In its 2015 CCO Report, BGC identified a 2015 ICE fine as a material noncompliance issue, but provided no details regarding the underlying facts that led to the fine or any remedial efforts undertaken as a result. After reviewing the report, DSIO requested that BGC amend the report and directed BGC to Staff Advisory No. 14-153 ("Advisory") for guidance and recommendations about the report's content. Additionally, DSIO specifically detailed for BGC that the amended report "should identify and provide a meaningful discussion of the noncompliance events and corresponding actions taken by [BGC] to remediate the noncompliance events identified." A portion of the ICE fine that BGC determined was a material noncompliance issue in the 2015 Report related to ICE's finding that BGC failed to produce voice recordings for six block trades brokered by its Sugar Land branch office. In BGC's 2015 Amended Report, BGC provided additional detail, but failed to disclose in the report that BGC: (1) believed the missing voice files were likely the result of brokers brokering trades on uncaptured or otherwise unrecorded lines, such as personal devices; and (2) instituted

remedial efforts by distributing a memo to brokers advising them of BGC's policy against the use of personal devices to broker trades. The failure to adequately disclose this issue and the associated remedial efforts failed to provide the Commission with the information required by Regulation 3.3(e)(5).

Likewise, in BGC's 2016 Report, BGC failed to adequately disclose other material noncompliance issues related to voice recording losses at the firm. As discussed above, BGC lost voice recordings for trades on its Sugar Land block trading desks in early 2016. In late 2016, these same desks had another voice recording failure in which recordings for two weeks of trades were not captured due to a software bug. BGC's 2016 Report was deficient. First, the report failed to make clear that two separate and independent instances of voice recording failures occurred in 2016. Second, the report did not adequately set forth the method of identification, cause, and scope of the voice recording failures. Third, the report failed to clearly disclose that the loss related to one of these failures stemmed, in part, from deletion of back-up tapes. In short, BGC failed to disclose sufficiently in the 2016 Report the facts and circumstances surrounding the Sugar Land voice recording losses, such that the Commission could understand and evaluate the issues and BGC's remedial efforts.

3. BGC Failed To Establish an Adequate Supervisory System and To Diligently Supervise Its Officers, Employees, and Agents.

As evidenced by BGC's failures described above, BGC failed to establish and maintain an adequate supervisory system. BGC lacked sufficient policies and procedures to prevent or detect its failures to comply with the Act and Regulations in areas such as audit trail and trade practices. BGC also failed to diligently supervise and ensure that its enacted policies and procedures were followed.

a. BGC's Policies and Procedures Were Inadequate.

During the Relevant Period, BGC's policies and procedures were inadequate to ensure compliance with the Act and Regulations. BGC set forth general policies in its FCM Manual, however, it lacked follow-on procedures or processes for ensuring compliance with those policies. For example, BGC had written policies about recordkeeping, but lacked follow-on policies and procedures to address the creation, maintenance, and retention of audit trail. Further, during the Relevant Period, BGC did not have adequate trade review or testing processes to confirm full audit trail capture.

Additionally, BGC had written policies against improper trade practices; however, adequate procedures and processes to detect front-running, prearranged trading, or wash sales were not in place across its traditional and block trading futures brokerage desks. Branch managers were tasked with reviewing daily random samples of order tickets for compliance with BGC's FCM Manual and applicable rules and regulations. Yet some BGC branch managers did not receive adequate instruction or training on what their review should include or how BGC expected them to monitor against improper trade practices. In short, BGC did not have an adequate process for providing all branch managers with information necessary to conduct a review for improper trade practices. BGC also did not have sufficient review or testing processes to check whether improper trading practices were occurring at BGC.

b. BGC Failed To Diligently Supervise Compliance with Its Policies and Procedures.

BGC failed to diligently supervise compliance with its policies and procedures. For example, BGC brokers did not follow BGC's FCM Manual and broker training materials relating to the creation of audit trail and block trade reporting. In 2015, BGC undertook to remediate deficiencies in audit trail and block trade reporting (late reporting and misreporting of block trades), which were previously identified by ICE and that were the subject of its 2015 ICE fine, through training on BGC's policies and procedures and exchange requirements. However, BGC continued to misreport and late-report block trades. Specifically, BGC misreported or late reported to the exchanges nine out of a sample of thirty-five block trades brokered by BGC in 2016.

BGC's FCM Manual also expressly precluded its brokers from using personal cell phones to conduct firm business. Notwithstanding that BGC conducted specific training on this policy in 2015, some BGC brokers utilized personal devices to broker trades that were not subject to recording by the firm's records systems. One BGC branch manager indicated that he used his personal cell phone to broker trades and assumed others under his supervision did as well. Further, at least one of the 100 random block trades requested by the Division was brokered via text message on a personal cell phone by another BGC branch manager.

Finally, BGC also violated its own policies related to broker supervision and monitoring. BGC branch managers did not effectively perform the supervisory duties assigned to them in BGC's policies and procedures. BGC's FCM Manual sets forth Designated Supervisory Managers ("DSMs") and the area supervised. For branch offices, the DSM was the branch manager who was responsible for supervising the branch. During much of the Relevant Period, however, branch managers at two BGC branches were unaware that they were the DSM for several brokers at their respective branch. Further, even though BGC's policies and procedures provided that branch managers are primarily responsible for monitoring brokers' trading activities, this monitoring was ineffective. Some branch managers did not review (or did not have ready access to) pre-trade and trade communications and other documents necessary to confirm proper reporting or brokering of trades. Branch managers' failure to effectively monitor broker trade activity was evidenced by BGC's continued misreporting and late-reporting of block trades.

III. LEGAL DISCUSSION

A. BGC Failed To Comply with Recordkeeping Obligations and To Promptly Provide Documents to the Division in Violation of Section 4g of the Act and Regulations 1.31, 1.35, and 3.3(g).

Section 4g of the Act requires FCMs and other registrants to create and maintain books and records related to trading activities. 7 U.S.C. § 6g (2012). Regulation 1.35, 17 C.F.R. § 1.35(a)(1) (2019), expands on this requirement, setting forth some of the specific books and records that are required to be created and maintained. Specifically, an FCM must:

(i) Keep full, complete, and systemic records . . . of all transactions relating to its business of dealing in commodity interests . . . which shall include all orders (filled, unfilled, or cancelled), . . . and all other records, which have been prepared in the course of its business of dealing in commodity interests

* * *

(iii) Keep all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a transaction in a commodity interest . . . whether transmitted by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media . . .

With the exception of pre-trade communications, all such records are required to be “kept in a form and manner that allows for the identification of a particular transaction.” Regulation 1.35(a)(5).

In regard to FCMs engaged in block trading activities, Regulation 1.35(b)(1) further provides that:

Each [FCM] . . . receiving a customer’s order that cannot immediately be entered into a trade matching engine shall immediately upon receipt thereof prepare a written record of the order including the account identification . . . and order number, and shall record thereon, by timestamp or other timing device, the date and time, to the nearest minute, the order is received, and in addition, for commodity option orders, the time, to the nearest minute, the order is transmitted for execution.

Regulation 1.31(b)(4), 17 C.F.R. § 1.31(b)(4) (2019), requires that registrants keep all books and records that are required to be maintained under the Act and Regulations in such manner as to make them “readily accessible” for a period of two years for paper records and for the duration of the retention period for electronic records. Upon request of the Commission, all of these documents are required to be “promptly” produced. Regulation 1.31(d). The Commission specifically extended the requirements of Regulation 1.31 to include records relevant to an FCM’s CCO report, rendering those records also subject to the requirements that they be “readily accessible” and “promptly” produced to the Commission upon request. *See* Regulation 3.3(g), 17 C.F.R. § 3.3(g) (2019).

BGC failed to create and maintain audit trail. BGC also failed, in many instances, to create a separate written record reflecting order receipt time for block trades. Additionally, BGC was unable to produce to the Division copies of all agreements with its clearing firm and copies of give-up screening agreements with its customers’ clearing firms. Further, BGC failed to promptly produce to the Division audit trail, customer lists, trade blotters, and documents supporting its CCO reports, which demonstrates BGC’s failure to create and maintain the records in a readily accessible manner as required. Thus, BGC violated Section 4g and Regulations 1.31, 1.35, and 3.3(g).

B. BGC Failed To File and Timely File Notifications with the Commission in Violation of Regulation 1.12.

Regulation 1.12(l)-(m), 17 C.F.R. 1.12(1)-(m) (2019), requires FCMs to file with the Commission within twenty-four hours specific items and notifications. These items and notifications include: notifications of changes in its senior management; notifications that it is the “subject of a formal investigation” by the SEC or a self-regulatory organization (“SRO”) (securities or futures); and exam reports issued by the SEC or a securities SRO.

BGC failed to file notifications related to numerous formal investigations conducted by FINRA, CME, ICE, and Nodal, of which it was the subject. Additionally, BGC failed to timely file notifications of an SEC investigation, FINRA exam reports, and of its change in CEO. Accordingly, BGC violated Regulation 1.12(l) and (m).

C. BGC Failed To Comply with CCO Obligations and Adequately Report to the Commission in Violation of Section 4d of the Act and Regulation 3.3.

Under the Act, FCMs are required to designate a CCO to perform the duties and responsibilities set forth in the Regulations. Section 4d(d) of the Act, 7 U.S.C. § 6d(d) (2012). The CCO’s duties include:

* * *

(3) Taking reasonable steps to ensure compliance with the Act and [Regulations] relating to the registrant’s business as a futures commission merchant . . . ;

(4) Taking reasonable steps to ensure the registrant establishes, maintains, and reviews written policies and procedures designed to remediate noncompliance issues identified by the [CCO] . . . ;

(5) Taking reasonable steps to ensure the registrant establishes written procedures reasonably designed for the handling, management response, remediation, retesting, and resolution of noncompliance issues;

* * *

Regulation 3.3(d), 17 C.F.R. 3.3(d) (2019).

Further, Regulation 3.3(e)(5) requires CCOs to prepare a written report annually, that among other things, describes “any material noncompliance issues identified and the corresponding action taken.” As the Commission has recognized, “[t]he annual report is intended to promote compliance behavior by requiring a registrant to conduct a periodic self-evaluation and to inform the Commission of possible compliance weaknesses that should be addressed.” Designation of a Chief Compliance Officer; Required Compliance Policies; and Annual Report of a Futures Commission Merchant, Swap Dealer, or Major Swap Participant, 75 Fed. Reg. 70,881, 70,883 (proposed Nov. 19, 2010) (codified at 17 C.F.R. § 3.3 (2019).

As detailed above, BGC did not take reasonable steps to ensure compliance with recordkeeping and notification requirements of the Act and the Regulations, and it did not have written procedures reasonably designed for dealing with all noncompliance issues. Additionally, when BGC learned of systemic recordkeeping failures, it failed to adopt policies and procedures to effectively remediate these noncompliance issues. Further, BGC's CCO report did not adequately describe material noncompliance issues at the firm and the remediation efforts associated with such issues. Accordingly, BGC violated Section 4d(d) of the Act and Regulation 3.3(d)(3)-(5) & (e)(5).

D. BGC Failed To Create An Adequate Supervisory System and Diligently Supervise Its Officers, Employees and Agents in Violation of Regulation 166.3.

Regulation 166.3, 17 C.F.R. § 166.3 (2019), requires that every Commission registrant “diligently supervise the handling by its partners, officers, employees and agents” of all activities relating to its business as a registrant. Regulation 166.3 imposes upon a registrant an affirmative duty to supervise its employees and agents diligently by establishing, implementing, and executing an adequate supervisory structure and compliance program. *CFTC v. Carnegie Trading Grp., Ltd.*, 450 F. Supp. 2d 788, 805 (N.D. Ohio 2006); *see also* Adoption of Customer Protection Rules, 43 Fed. Reg. 31,886, 31,889 (July 24, 1978) (codified at 17 C.F.R. pts. 1 and 166). For a registrant to fulfill its duties under Regulation 166.3, it must both design an adequate program of supervision and ensure that the program is followed. *See, e.g., In re GNP Commodities, Inc.*, CFTC No. 89-1, 1992 WL 201158, at *17–19 (CFTC Aug. 11, 1992), *aff'd in part and modified sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993).

A violation of Regulation 166.3 is an independent violation for which no underlying violation is necessary. *GNP Commodities*, 1992 WL 201158, at* 17 n.11; *In re Paragon Futures Ass'n*, CFTC No. 88-18, 1992 WL 74261, at *13 (CFTC Apr. 1, 1992). Consequently, a violation of Regulation 166.3 “is demonstrated by showing either that: (1) the registrant’s supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently.” *In re FCStone, LLC*, CFTC No. 15-21, 2015 WL 2066891, at *3 (May 1, 2015) (consent order) (citing *In re Murlas Commodities, Inc.*, CFTC No. 85-29, 1995 WL 523563, at *9 (CFTC Sept. 1, 1995)); *see also Paragon*, 1992 WL 74261, at *14 (concluding that the “focus of any proceeding to determine whether Rule 166.3 has been violated will be on whether such review occurred and, if it did, whether it was ‘diligent’”). 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*, 1992 WL 74261, at *14.

BGC both failed to adopt an adequate supervisory system and failed to perform its supervisory duties diligently in violation of Regulation 166.3. First, BGC failed to create sufficient policies and follow-on procedures to ensure compliant recordkeeping leading to its violations of Regulations 1.31, 1.35, and 3.3. Additionally, BGC failed to create sufficient policies and follow-on procedures for monitoring improper trade practices. Second, BGC failed to diligently supervise its employees to ensure compliance with written policies, including policies requiring filing timely notifications of changes in senior management, formal investigations, and exams with the Commission, and prohibiting use of personal devices to broker trades, leading to violations of Regulations 1.12, 1.31, 1.35, and 3.3. Additionally, BGC

failed to adequately supervise its employees in ensuring accurate reporting of block trades to the exchanges and in ensuring that all brokers were being supervised. Accordingly, BGC has violated Regulation 166.3.

E. BGC Is Liable for the Acts of Its Officers, Employees, and Agents.

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 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 BGC's employees occurred within the scope of their employment, office, or agency with BGC; therefore, pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2, BGC 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 BGC violated Sections 4g and 4d(d) of the Act, 7 U.S.C. §§ 6g, 6d(d) (2012), and Regulations 1.12(l)-(m), 1.31(b)(4) and (d)(2)-(3), 1.35(a)(1)(i) and (iii), (a)(5) and (b)(1), 3.3(d)(3)-(5), (e)(5) and (g), and 166.3, 17 C.F.R. §§ 1.12(l)-(m), 1.31(b)(4), (d)(2)-(3), 1.35(a)(1)(i), (iii), (a)(5), (b)(1), 3.3(d)(3)-(5), (e)(5), (g), 166.3 (2019).

V. OFFER OF SETTLEMENT

BGC has submitted the Offer in which, without admitting or denying the findings and conclusions herein, 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, tit. II, §§ 201–53, 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 BGC 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 BGC violated Sections 4g and 4d(d) of the Act, 7 U.S.C. §§ 6g, 6d(d) (2012), and Regulations 1.12(l)-(m), 1.31(b)(4) and (d)(2)-(3), 1.35(a)(1)(i) and (iii), (a)(5) and (b)(1), 3.3(d)(3)-(5), (e)(5) and (g), and 166.3, 17 C.F.R. §§ 1.12(l)-(m), 1.31(b)(4), (d)(2)-(3), 1.35(a)(1)(i), (iii), (a)(5), (b)(1), 3.3(d)(3)-(5), (e)(5), (g), 166.3 (2019);
 2. Orders BGC to cease and desist from violating Sections 4g and 4d(d) of the Act and Regulations 1.12(l)-(m), 1.31(b)(4) and (d)(2)-(3), 1.35(a)(1)(i) and (iii), (a)(5) and (b)(1), 3.3(d)(3)-(5), (e)(5) and (g), and 166.3;
 3. Orders BGC to pay a civil monetary penalty in the amount of three million dollars (\$3,000,000), plus, if applicable, post-judgment interest; and
 4. Orders BGC 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. BGC shall cease and desist from violating Sections 4g and 4d(d) of the Act, 7 U.S.C. §§ 6g, 6d(d) (2012), and Regulations 1.12(l)-(m), 1.31(b)(4) and (d)(2)-(3), 1.35(a)(1)(i) and (iii), (a)(5) and (b)(1); 3.3(d)(3)-(5), (e)(5) and (g); and 166.3, 17

C.F.R. §§ 1.12(l)-(m), 1.31(b)(4), (d)(2)-(3), 1.35(a)(1)(i), (iii), (a)(5), (b)(1), 3.3(d)(3)-(5), (e)(5), (g), 166.3 (2019).

- B. BGC shall pay a civil monetary penalty in the amount of three million dollars (\$3,000,000) (“CMP Obligation”). If the CMP Obligation is not paid in full within ten days of the date of the 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 the entry of the Order pursuant to 28 U.S.C. § 1961 (2012).
- C. BGC 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, BGC 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, BGC shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. BGC shall accompany payment of the CMP Obligation with a cover letter that identifies BGC and the name and docket number of this proceeding. BGC 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. BGC and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: BGC agrees that neither it nor any of its successors, 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 BGC’s: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. BGC 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.

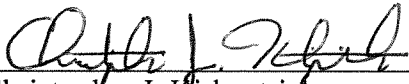
2. Retention of Outside Consultant: In the course of the Division's investigation, BGC retained an outside consultant (the "Outside Consultant") to assess and make recommendations for improvement where necessary with respect to BGC's compliance with the provisions of the Act and Regulations that the Commission herein finds to have been violated (the "Relevant Provisions"). BGC shall continue to retain the Outside Consultant for purposes of generating two reports, as outlined below, and shall facilitate the Outside Consultant's efforts by making available to the Outside Consultant all relevant BGC records and personnel, whether located in the United States or any other location. BGC shall pay the Outside Consultant. Upon completion of its review, and by no later than one year from the date of the entry of this Order, the Outside Consultant shall generate a report for BGC (the "First Report") assessing BGC's compliance with the Relevant Provisions and making related recommendations, where necessary, for improvements in BGC's practices, policies, and procedures. BGC shall provide a copy of the First Report to the Commission. One year after providing the First Report to BGC, the Outside Consultant shall generate an additional report for BGC (the "Second Report"), assessing BGC's remediation with respect to the Relevant Provisions. BGC shall provide a copy of the Second Report to the Commission. If in the Division's opinion the Second Report identifies any material deficiencies with respect to the Relevant Provisions, the Division may, in its sole discretion, require that BGC retain the Outside Consultant for purposes of generating one additional report (the "Third Report"), to be provided to BGC one year after delivery of the Second Report. If a Third Report is required, it must satisfy the same requirements as the First Report and Second Report. BGC shall provide a copy of that report to the Commission. Within thirty days of providing each report (i.e., the First Report, Second Report, and Third Report, if required) to the Commission, BGC shall be permitted to advise the Commission and the Outside Consultant of any assessments it disputes and any recommendations it considers unnecessary, inappropriate, unduly burdensome, or for which it proposes an alternative solution. With respect to any such recommendation, BGC may defer the adoption or implementation of the recommendation so long as it can propose in writing an alternative policy, procedure, or system designed to achieve the same objective or otherwise substantiate the basis for declining to implement the recommendation.
3. Cooperation, in General: BGC shall cooperate fully and expeditiously with the Commission in this action and in any current or future Commission investigation or action related thereto. BGC shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action. BGC's cooperation shall continue for a period of five years from the date of the entry of this Order.
4. Partial Satisfaction: BGC understands and agrees that any acceptance by the Commission of partial satisfaction of BGC's CMP Obligation shall not be deemed a waiver of its obligation to make further payments to this Order or a

waiver of the Commission's right to seek to compel payment of any remaining balance.

5. Change of Address: Until such time as BGC satisfies in full its CMP Obligation as set forth in this Order, BGC shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten 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: November 22, 2019