

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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Office of Proceedings
Proceedings Clerk

7:36 am, Aug 19, 2020

In the Matter of:

The Bank of Nova Scotia,

Respondent.

CFTC Docket No. 20-27

**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 between approximately January 2008 and July 2016 (“Relevant Period”), The Bank of Nova Scotia (“BNS”) violated Section 9(a)(2) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 13(a)(2) (2018); for conduct occurring on or after July 16, 2011, Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018); and for conduct occurring on or after August 15, 2011, Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2018), and Commission Regulation (“Regulation”) 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (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 BNS 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, BNS 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, except to the extent that BNS admits those findings in any related action against BNS by, or any agreement with, the United States Department of Justice (“DOJ”) or any other governmental agency or office, BNS 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 BNS 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. BNS 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. BNS 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

On thousands of occasions throughout the Relevant Period, BNS, by and through Corey Flaum,² a BNS precious metals trader based in New York, and three other BNS precious metals traders, each of whom acted independently (“Traders”), placed orders to buy or sell certain gold and silver futures contracts traded on the Commodity Exchange, Inc. (“COMEX”) with the intent to cancel those orders before execution (i.e., “spoofing”). In doing so, the Traders engaged in a manipulative and deceptive conduct, intentionally sending false signals of supply or demand designed to deceive market participants into executing against other orders the Traders wanted executed. The Traders engaged in this conduct with the intent to manipulate market prices.

By and through the Traders’ acts, BNS violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2018); for conduct occurring on or after July 16, 2011, Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018); and for conduct occurring on or after August 15, 2011, Section 6(c)(1) of the Act, 7 U.S.C. § 9(1)(2018), and Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2019).

The Commission previously entered an order on September 28, 2018, sanctioning BNS for spoofing in the precious metals futures market. BNS had disclosed to the CFTC that one of its traders (Flaum), who BNS terminated, had engaged in spoofing, and the Commission accepted an Offer of Settlement from BNS to resolve its investigation at an early stage. *See In re The Bank of Nova Scotia*, CFTC No. 18-50, 2018 WL 4828376, at *1, *4 (Sept. 28, 2018) (“*BNS I*”) (imposing an \$800,000 civil monetary penalty for spoofing engaged in by traders on its precious metals desk in New York from June 2013 through June 2016, in violation of Section 4c(a)(5)(C) of the Act).

The Commission predicated its findings as to the nature and scope of the spoofing at BNS and the sanctions in *BNS I* on BNS’s representations identifying its traders’ order entry operator identifiers (“Tag50s”). The Commission also expressly recognized BNS’s cooperation and credited its cooperation in the form of a substantially reduced civil monetary penalty. *BNS I*, at *1-2. BNS’s representations, however, were false and omitted multiple Tag50s its precious metals traders, including Flaum, used. BNS’s false statements and omissions resulted in part from BNS’s incomplete and inconsistent recordkeeping.

BNS failed to identify these errors to the Commission’s Division of Enforcement and notify the Commission of its misrepresentations and omissions before it submitted its offer of settlement in *BNS I*. BNS’s multiple misrepresentations and omissions in *BNS I* concealed the

² The Commission has already taken action against Flaum, who cooperated in this matter. *See In re Flaum*, CFTC No. 19-15, 2019 WL 3425039, at *1-4 (July 25, 2019) (finding that Flaum engaged in spoofing to deceive market participants into executing against orders he wanted filled and with the intent to manipulate market prices in violation of Sections 9(a)(2), 4c(a)(5)(C), and 6(c)(1) of the Act and Regulation 180.1(a)(1) and (3). In addition to settling with the Commission, Flaum pleaded guilty to attempted price manipulation and is awaiting sentencing. *See Minute Entry, United States v. Flaum*, No. 19 CR 338 (BMC) (E.D.N.Y. July 25, 2019), ECF No. 4.

true scope and nature of its wrongdoing, which accordingly was not reflected in *BNS I*. Although BNS did not identify these omissions prior to the resolution of *BNS I*, BNS has worked to identify the missing information for the Commission in the period since these omissions were identified.

B. RESPONDENT

The Bank of Nova Scotia is a chartered schedule I bank on the Bank Act (Canada), headquartered in Toronto, Canada. BNS has been provisionally registered with the Commission as a Swap Dealer since December 31, 2012. The spoofing activity described in this Order emanated from three separate BNS offices.

C. FACTS

1. Spoofing and Attempted Manipulation

During the Relevant Period, in connection with its precious metals business, BNS employed the Traders at trading desks in New York, London and Hong Kong. As part of their responsibilities, the Traders, on behalf of BNS, placed bids and offers for certain gold and silver³ futures contracts traded on COMEX, a futures exchange and Designated Contract Market (“DCM”) that is owned and operated by CME.

On thousands of occasions during the Relevant Period, the Traders—principally Flaum—manually placed bids and offers for certain gold and silver futures contracts with the intent to cancel those orders before execution. Generally, the Traders’ unlawful trading involved three steps. First, the trader placed a relatively small bid or offer with the intent to execute that order (the “Genuine Order”). Second, prior to the execution of the Genuine Order, that trader placed a larger order (or multiple small orders) on the opposite side of the market with the intent to cancel the order(s) before execution (the “Spoof Order”). The Traders placed the Spoof Orders to create a false impression of buying or selling interest, with the intent to manipulate prices to reflect their desired price and not the legitimate forces of supply and demand. Third, within seconds of the Genuine Order being filled, the trader cancelled the Spoof Order before it was filled. The Traders’ unlawful trading, which they executed at times between approximately January 2008 and July 2016, and involved thousands of Spoof Orders, was at times successful. The Traders executed trades at the prices they desired, benefitting BNS and inflicting harm on the markets and other market participants, causing approximately \$6.6 million in market losses.

BNS’s compliance function, especially as it related to trade surveillance, failed to detect and deter the Traders’ unlawful trading practices. On at least two occasions between approximately August 2013 and February 2016, senior members of BNS’s compliance group had substantial information regarding unlawful trading by Trader A, who was based in Hong Kong at that time, but failed to stop that activity. BNS’s compliance staff thus contributed to the illegal conduct and undermined the control functions necessary to an effective compliance program.

³ On a limited number of occasions, Flaum and Trader A engaged in the same conduct with respect to platinum and palladium futures contracts.

First, in August 2013, a senior BNS compliance official, Compliance Officer A, circulated to BNS traders a compliance information deck setting forth the requirements under the Commission's then-recently issued final guidance regarding prohibitions on disruptive trading practices under Section 747 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111-203, 124 Stat. 1376. Trader A responded, seeking clarification and providing substantial information regarding the nature of his trading, including by describing how he placed groups of one-contract orders on one side of the market to facilitate executions on the opposite side of the market. Compliance Officer A forwarded Trader A's question to two other senior BNS compliance officers, Compliance Officers B and C. Notwithstanding the substantial information available to the compliance officers regarding Trader A's unlawful trading activity, no compliance officer undertook further investigation of Trader A's trading practices, provided further guidance or training, or otherwise followed up on Trader A's inquiry.

Two and a half years later, in February 2016, one of BNS's futures commission merchants ("FCM A") contacted Compliance Officer C, inquiring about suspicious trading engaged in by Trader A. FCM A had flagged six instances of Trader A's activity for possible spoofing. In each instance, Trader A had placed groups of multiple one-contract orders opposite iceberg orders that were executed. Stating that the pattern was "[p]retty obvious," Compliance Officer C forwarded the information to Compliance Officer B. Despite describing the pattern of trading as "[p]retty obvious," Compliance Officer C replied to FCM A that BNS had determined Trader A's trading was not problematic: "[W]hat is being seen may look like potential layering or spoofing, but based on the fact [that] we are talking [about] 1 lots, we believe he is just adjusting his exposure to the marketplace."

As these two instances show, BNS compliance staff had substantial information regarding, but failed to stop, unlawful trading by Trader A between August 2013 and February 2016.

2. Remediation

BNS represents that since 2016, it has engaged in remedial measures, including terminating Flaum and Compliance Officers A, B, and C and making a voluntary disclosure to the CFTC concerning Flaum's conduct.⁴ BNS has also strengthened its compliance program, including nearly doubling its annual compliance operating budget and adding more than 200 full-time equivalent compliance positions; hiring and promoting compliance personnel with the necessary experience and skills; improving the Company's compliance technology infrastructure; and implementing industry-standard trade surveillance tools. Furthermore, in connection with its resolution with the Department of Justice, Criminal Division, Fraud Section and the United States Attorney's Office for the District of New Jersey and its resolution with the CFTC concerning various issues relating to BNS's swap-dealer business (the "Swap Dealer Resolution"),⁵ BNS has

⁴ In addition, in April 2020, BNS announced that it is winding down its metals business, including the futures trading desks responsible for the conduct at issue here.

⁵ The Commission is entering a separate Order today against BNS concerning BNS's failure to supervise its swap dealer activities diligently, in violation of Sections 4s(f)(1)(C), 4s(g)(1) and (3), 4s(h)(1), and 6(c)(2) of the Act, 7 U.S.C. §§ 6s(f)(1)(C), 6s(g)(1), (3), 6s(h)(1), 9(2) (2018), and Regulations 23.431(a)(3), 23.201(a)(1), 23.202(a)(1), 23.402(b), 23.602(a), 1.31(d)(3)(ii), and 3.3(e), 17 C.F.R. §§ 23.431(a)(3), 23.201(a)(1), 23.202(a)(1), 23.402(b),

agreed to the imposition of a single monitor who will have responsibility for the tasks outlined in Part VI below, in the Deferred Prosecution Agreement (“the DPA”) between BNS and DOJ dated August 19, 2020, and the Swap Dealer Resolution dated August 19, 2020.

III. LEGAL DISCUSSION

A. Spooing in Violation of Section 4c(a)(5)(C) of the Act for Conduct Occurring on, or After, July 16, 2011

For conduct occurring on, or after, July 16, 2011, Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018), makes it unlawful for “any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that . . . is, is of the character of, or is commonly known to the trade as, ‘spoofing’ (bidding or offering with the intent to cancel the bid or offer before the execution).” *See, e.g., United States v. Coscia*, 866 F.3d 782, 792-93 (7th Cir. 2017) (holding that because the Act clearly defines spoofing, it provides adequate notice of prohibited conduct), *cert denied*, 138 S. Ct. 1989 (2018).

As described above, between July 16, 2011 and the end of the Relevant Period, BNS, by and through the acts of the Traders, placed bids and offers for futures contracts listed on COMEX, a registered DCM, with the intent to cancel those bids and offers before they were executed. By engaging in this conduct, BNS violated Section 4c(a)(5)(C) of the Act. *See CFTC v. Oystacher*, 203 F. Supp. 3d 934, 941-42 (N.D. Ill. 2016) (denying motion for judgment on the pleadings, holding that allegations of placing “both bids and offers with the intent to cancel those bids or offers before execution” constitutes “trading behavior [that] falls within the Spoofing Statute’s defined prohibition”).

B. Attempted Manipulation in Violation of Section 9(a)(2) of the Act, and for Conduct Occurring on, or After, August 15, 2011, Section 6(c)(1) of the Act and Regulation 180.1(a)(1) and (3)

Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2018), makes it unlawful for “[a]ny person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.”

For conduct occurring on, or after, August 15, 2011, Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2018), prohibits the use or attempted use of any manipulative or deceptive device in connection with any swap or contract of sale of any commodity in interstate commerce, or for future delivery, in violation of Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2019), which in part states:

It shall be unlawful for any person, directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to . . . : (1) Use or employ, or attempt to use or employ, any manipulative device, scheme or artifice to defraud; [or] . . . (3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person

23.602(a), 1.31 (d)(3)(ii), 3.3(e) (2019). *See In re The Bank of Nova Scotia*, CFTC No. 20-26 (Aug. 19, 2020).

As described above, BNS, by and through the acts of the Traders, who each acted independently, engaged in manipulative and unlawful trading and attempted to manipulate the price of gold and silver futures contracts subject to the rules of COMEX, a registered entity, by entering the Spoof Orders intentionally to send market participants a false signal of greater buying or selling interest to deceive them into transacting against their Genuine Orders. *See e.g., In re Tower Research Capital LLC*, CFTC No. 20-06, 2019 WL 6001893, at *1-3 (Nov. 6, 2019) (consent order) (finding that spoofing intended to send false signals of greater buying or selling interest constituted a manipulative or deceptive device in violation of Section 6(c)(1) and Regulation 180.1); *In re Merrill Lynch Commodities, Inc.*, CFTC No. 19-07, 2019 WL 2725774, at *3-4 (June 25, 2019) (consent order) (finding that spoofing constituted attempted price manipulation under Section 9(a)(2)); *cf. SEC v. Lek Sec. Corp.*, 276 F. Supp. 3d 49, 58-60 (S.D.N.Y. Aug. 25, 2017) (noting that “trading engineered to stimulate demand” may inject false pricing signals into the market and thus constitute manipulation under the securities laws (quoting *ATSI Commc’ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 101 (2d Cir. 2007))). BNS, through the Traders’ misconduct, violated Section 9(a)(2) of the Act; and, for conduct occurring on or after August 15, 2011, Section 6(c)(1) of the Act, and Regulation 180.1(a)(1) and (3).

C. BNS Is Liable for the Acts of Its Agents

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2018), and Regulation 1.2, 17 C.F.R. § 1.2 (2019), provide that “[t]he 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) *superseded by statute on other grounds*, Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 753(a), 124 Stat. 1376, 1750-54 (2010), *as recognized in Chu v. CFTC*, 823 F.3d 1245, 1249 (9th Cir. 2016); *Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986); *CFTC v. Byrnes*, 58 F. Supp. 3d 319, 324 (S.D.N.Y. 2014).

The Traders engaged in the conduct described herein within the scope of their employment with BNS; therefore, pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2, BNS is liable for those acts, omissions, and failures in violation of the provisions of the Act and Regulation cited above.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, BNS, by and through its agents, the Traders, violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2018); for conduct occurring on or after July 16, 2011, Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018); and for conduct occurring on or after August 15, 2011, Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2018), and Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2019).

V. OFFER OF SETTLEMENT

BNS has submitted the Offer in which, without admitting or denying the findings and conclusions herein, except to the extent that BNS admits those findings in any related action against BNS by, or any agreement with, DOJ or any other governmental agency or office, BNS:

- 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 (2018) and 28 U.S.C. § 2412 (2018), 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, §§ 201-253, 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 BNS 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 BNS violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2018); for conduct occurring on or after July 16, 2011, Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018); and for conduct occurring on

or after August 15, 2011, Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2018), and Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2019);

2. Orders BNS to cease and desist from violating Sections 4c(a)(5)(C), 6(c)(1), and 9(a)(2) of the Act, and Regulation 180.1(a)(1) and (3);
 3. Orders BNS to pay restitution in the amount of six million, six hundred twenty-two thousand, one hundred ninety dollars (\$6,622,190) within ten business days of the date of the entry of this Order, plus post-judgment interest, if applicable; provided, however, that the restitution will be offset by the amount of any restitution payment made pursuant to the DPA;
 4. Orders BNS to pay a civil monetary penalty in the amount of forty-two million dollars (\$42,000,000) within ten business days of the date of the entry of this Order, plus post-judgment interest, if applicable; provided, however, that up to half of the civil monetary penalty (i.e., \$21,000,000) will be offset by the amount of any criminal monetary penalty paid pursuant to the DPA; and
 5. Orders BNS 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, including, but not limited to, BNS's undertaking to pay disgorgement in the amount of eleven million, eight hundred twenty-eight thousand, nine hundred twelve dollars (\$11,828,912) within ten business days of the date of the entry of this Order, plus post-judgment interest, if applicable; provided, however, that the disgorgement will be offset by the amount of any criminal disgorgement payment made pursuant to the DPA; and
- F. Represents that BNS is in the process of winding down its precious metals business and that it proactively engaged in remedial measures relating to its trading of spot, options, and futures contracts in its commodities business, including enhancing its compliance program and internal controls through, among other things:
1. Nearly doubling its annual compliance operating budget and adding more than 200 full-time equivalent compliance positions;
 2. Hiring and promoting compliance personnel with the necessary experience and skills;
 3. Improving BNS's compliance technology infrastructure; and
 4. Implementing industry-standard trade surveillance tools.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. BNS and its successors and assigns shall cease and desist from violating Sections 4c(a)(5)(C), 6(c)(1), and 9(a)(2) of the Act, 7 U.S.C. § 6c(a)(5)(C), 9(1), 13(a)(2) (2018), and Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2019).
- B. BNS shall pay restitution in the amount of six million, six hundred twenty-two thousand, one hundred ninety dollars (\$6,622,190) (“Restitution Obligation”) within ten business days of the date of the entry of this Order. If the Restitution Obligation is not paid in full or otherwise satisfied within ten business days of the date of the entry of this Order, then post-judgment interest shall accrue on the Restitution Obligation beginning on the date following the 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 (2018).

The Restitution Obligation will be offset by the amount of any restitution payment made pursuant to the DPA. BNS shall provide proof of any payment under the DPA, including the case name(s) and number(s) in connection with which such payment has been made, and the amount by which the Restitution Obligation is to be reduced, within ten days of making such payment to:

Paul G. Hayeck
Deputy Director, Division of Enforcement
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20851

The Commission appoints the NFA to receive payments of restitution and any post-judgment interest from BNS and handle the distribution of payments to any persons designated to receive restitution. As provided in the DPA, DOJ will serve as the claims administrator with respect to the restitution payment received pursuant to the DPA and shall have sole discretion to determine how the restitution payment will be disbursed. The NFA shall receive such payment into an account designated the “BNS Victim Compensation Settlement Fund.” Because the NFA is not being specially compensated for these services, and these services are outside the normal duties of the NFA, it shall not be liable for any action or inaction arising from its appointment in this matter other than actions involving fraud.

- C. BNS shall pay a civil monetary penalty in the amount of forty-two million dollars (\$42,000,000) (“CMP Obligation”) within ten business days of the date of the entry of this Order. If the CMP Obligation is not paid in full or otherwise satisfied within ten business days of the date of the entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date following entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of the entry of this Order pursuant to 28 U.S.C. § 1961.

The CMP Obligation will be offset by the amount of any criminal monetary penalty paid pursuant to the DPA. BNS shall provide (to the persons and addresses listed below) proof of any payment under the DPA, including the case name(s) and number(s) in connection with which such payment has been made, and the amount by which the CMP Obligation is to be reduced, within ten days of making such payment.

BNS shall pay the CMP Obligation that has not been offset 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, 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 facsimile
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic transfer, BNS shall contact Marie Thorn or her successor at the above address to receive payment instructions and shall fully comply with those instructions. BNS shall accompany payment of the CMP Obligation with a cover letter that identifies BNS and the name and docket number of this proceeding. BNS 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, DC 20581.

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

1. Monitor: BNS agrees to retain an independent compliance monitor pursuant to the terms described in the DPA and its Attachment D and the Swap Dealer Resolution, Part VI.2.
2. Public Statements: BNS 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 BNS's and/or its agents' and/or employees': (i) testimonial obligations; or (ii) right to take positions in other proceedings to which the Commission is not a party. BNS and its successors and assigns shall comply with this Order, and shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.

3. Disgorgement: BNS agrees to pay disgorgement in the amount of eleven million, eight hundred twenty-eight thousand, nine hundred twelve dollars (\$11,828,912) within ten business days of the date of the entry of this Order (“Disgorgement Obligation”). If the Disgorgement Obligation is not paid in full or otherwise satisfied within ten business days of the date of the entry of this Order, then post-judgment interest shall accrue on the Disgorgement Obligation beginning on the date following entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of the entry of this Order pursuant to 28 U.S.C. § 1961.

The Disgorgement Obligation will be offset by the amount of any criminal disgorgement payment made pursuant to the DPA. BNS shall provide (to the persons and addresses listed below) proof of any payment under the DPA, including the case name(s) and number(s) in connection with which such payment has been made, and the amount by which the Disgorgement Obligation is to be reduced, within ten days of making such payment.

BNS shall pay any portion of the Disgorgement Obligation that has not been offset 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, the payment should 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 facsimile
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic transfer, BNS shall contact Marie Thorn or her successor at the above address to receive payment instructions and shall fully comply with those instructions. BNS shall accompany payment of the Disgorgement Obligation with a cover letter that identifies BNS and the name and docket number of this proceeding. BNS 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, DC 20581.

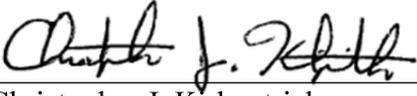
4. Cooperation with the Commission: BNS shall cooperate fully and expeditiously with the Commission, including the Division, in this action and in any current or future Commission investigation or action related thereto. BNS shall also cooperate with the Commission in any investigation, civil litigation, or

administrative proceeding related to, or arising from, the subject matter of this proceeding. BNS's cooperation shall continue for a period of five years from the date of entry of this Order. As part of such cooperation, BNS agrees to:

- a. Preserve and produce to the Commission in a responsive and prompt manner, as requested by Division staff, all non-privileged documents, information, and other materials wherever located, including but not limited to audio files, electronic communications, and trading records and data, in the possession, custody, or control of BNS;
 - b. Comply fully, promptly, completely, and truthfully, subject to any legally recognized privilege or applicable law and regulations, with any inquiries or requests for information and documents by the Commission;
 - c. Identify and authenticate relevant documents and other evidentiary materials, execute affidavits or declarations, and provide a corporate representative to testify completely and truthfully at depositions, trial, and other judicial proceedings, when requested to do so by Division staff;
 - d. Use its best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of BNS, regardless of the individual's location and at such a location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including, but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such trial, proceeding, or investigation, subject to applicable law and regulations; and
 - e. Subject to applicable laws and regulations, use its best efforts to assist in locating and contacting any prior (as of the time of the request) officer, director, employee, or agent of BNS.
5. Partial Satisfaction: BNS understands and agrees that any acceptance by the Commission of partial satisfaction of BNS's Restitution Obligation, CMP Obligation, or Disgorgement 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.
 6. Change of Address: Until such time as BNS satisfies in full its Restitution Obligation, CMP Obligation, and Disgorgement Obligation as set forth in this Order, BNS shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten days of the change.
 7. Remediation: As set forth above, BNS represents that it has already undertaken and continues to undertake remedial measures to enhance its compliance program and internal controls. BNS shall maintain and update its compliance program as appropriate so that it is designed and implemented to effectively detect and deter

violations of the Act and shall comply with the obligations relating to its corporate compliance program and reporting requirements as set forth in the DPA.

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

A handwritten signature in black ink, appearing to read "Christopher J. Kirkpatrick", written over a horizontal line.

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

Dated: August 19, 2020