

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:)
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**Citibank N.A., Citigroup Energy
Inc., and Citigroup Global
Markets, Inc.,**)

CFTC Docket No: 20-66

Respondents.)
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_____)
)

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6(c) AND 6(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 as early as 2014 to at least November 2018 (“Relevant Period”), Citibank N.A. (“Citi”), Citigroup Energy Inc., and Citigroup Global Markets, Inc., (collectively “Respondents”) violated Commission Regulation (“Regulation”) 166.3, 17 C.F.R. § 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 Respondents 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, Respondents have submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondents consent 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 acknowledge service of this Order.¹

¹ Respondents consent 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

II. FINDINGS

The Commission finds the following:

A. SUMMARY

In December 2017, Division of Enforcement (“Division”) staff sent a subpoena to Citi, for, among other things, audio recordings of certain Citi traders on one particular day, in connection with an ongoing Division investigation. On February 9, 2018, Citi represented to Division staff that a hold notice had been issued to Citi staff and confirmed that responsive audio recordings would be preserved. Relying on these representations, Division Staff agreed to Citi’s request that Citi be permitted to prioritize production of electronic communications and defer production of the requested audio recordings until a later date. On October 30, 2018, Division staff requested that Citi produce the responsive audio recordings.

On December 3, 2018, Citi notified Division staff that it had deleted the responsive audio recordings roughly three weeks earlier due to a design flaw in its audio preservation system (a system widely used by large financial institutions, and referred to herein as the “Audio Preservation System” or “System”). This System recorded and preserved audio for Citi and its affiliated North American swap dealers, including Citigroup Energy Inc. and Citigroup Global Markets, Inc. (collectively the “Citi Entities” or “Respondents”). As a result, the System deleted more than 2.77 million audio files for 982 users, including audio recordings that were responsive to the December 2017 subpoena and which Citi had assured Division staff were being preserved.

The Audio Preservation System had what one Citi employee described as a “design flaw,” in a 2014 memorandum to senior management in the Global Voice Operations (“GVO”) group, i.e., the group responsible for overseeing the Audio Preservation System. As that employee described it, if the System was not configured correctly, there was a “ticking time bomb effect” that could—and here did—lead to the automatic deletion of audio recordings.

Citi did not maintain adequate internal controls with respect to its preservation of audio and thus failed to diligently supervise matters related to its business as a Commission registrant. First, Citi failed to adequately staff the GVO group, including by failing to employ individuals with adequate technical knowledge. Second, GVO management did not take timely and appropriate steps to mitigate the risk posed by the System’s design flaw after being on notice of

claimant, and agree that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondents do 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. Respondents do 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.

the problem as of 2014. Third, Citi did not have adequate procedures in place to document, understand, and test changes to the Audio Preservation System. And fourth, Citi did not have adequate procedures in place to ensure that Citi personnel—including legal and compliance personnel who relied on the Audio Preservation System in responding to regulatory requests—were apprised of important risks to the integrity of the information contained on the System that were known to the GVO group.

B. RESPONDENTS

Citibank N.A. is a national banking association with its main office in Sioux Falls, South Dakota and offices in, among other places, New York City. Citibank, N.A. provides consumer finance, investment banking, commercial banking, and other services. Citibank N.A. became a provisionally registered swap dealer in December 2012.

Citigroup Energy Inc. has been provisionally registered with the Commission as a swap dealer since 2012. Citigroup Energy Inc. has its headquarters in Houston, Texas.

Citigroup Global Markets, Inc. has been registered with the Commission as a futures commission merchant since 1979 and has been provisionally registered with the Commission as a swap dealer since 2012. Citigroup Global Markets, Inc. is headquartered in New York, New York.

C. FACTS

1. Citi's Audio Preservation System Deleted Recordings Responsive to a CFTC Subpoena After Citi Assured Division Staff That the Recordings Would Be Preserved

In 2017, the Division began investigating certain trading by Citi. As part of its investigation, on December 21, 2017, Division staff issued a subpoena to Citi which, among other things, required the production of communications relating to certain of Citi's trading on a particular date, identifying particular Citi custodians by name.

On February 9, 2018, Citi informed Division staff that a hold notice had been sent in connection with the December 2017 subpoena and that responsive audio recordings would be preserved. Other than sending the internal hold notice to the GVO group, among others, Citi did not take adequate steps—such as segregating or duplicating the responsive audio recordings to preserve the audio recordings. Division staff allowed Citi, as requested by Citi, to produce responsive records on a rolling basis, including by first producing non-audio documents, including electronic communications. Citi made this request to defer productions in order to mitigate the cost and burden on Citi in responding to the December 2017 subpoena. In agreeing to the request, Division staff relied on Citi's representation that the audio recordings existed and that they would be retained.

On October 12, 2018, Citi’s Audio Preservation System began deleting audio files. Starting on October 12, 2018, and each day following, the System deleted audio recordings created exactly two years before (e.g., on October 13, 2018, the System deleted audio recordings created on October 13, 2016; on October 14, 2018, the System deleted audio recordings created on October 14, 2016, etc.).

Eleven days after the Audio Preservation System began to automatically delete audio recordings, Division staff issued a second subpoena to Citi, which included requests for audio from May 2016. Citi did not take any steps upon its receipt of the second subpoena to ensure that the Audio Preservation System was actually preserving audio, and the System continued to delete audio recordings daily.

On October 30, 2018—after having deferred production of audio recordings responsive to the December 2017 subpoena, at Citi’s request, for more than ten months since receiving the subpoena—Division staff requested that Citi produce audio recordings for several dates, including for two custodians for one specific date in November 2016 identified in the December 2017 subpoena. When Division staff made that request, the audio recordings responsive to the December 2017 subpoena still existed. In November 2018, Division staff asked again about the status of Citi’s document production, including its production of the audio recordings for the specific date requested. That same day, Citi’s Audio Preservation System automatically deleted audio recordings responsive to the December 2017 subpoena.

The next day, Citi submitted for the first time since Citi received the Division’s December 2017 subpoena an audio collection request—including a request for the just-deleted, subpoenaed audio—to the GVO group. Until that time, Citi had not taken any steps to collect the audio that was responsive to the December 2017 subpoena. In the course of responding to the audio collection request, Citi’s GVO group learned that Citi’s Audio Preservation System had deleted recordings of North American users’ telephone calls recorded during an approximately one-month period, from October 13 through November 17, 2016. All told, Citi’s audio preservation system deleted more than 2.77 million recordings. These 2.77 million recordings comprised 683,296 calls for 982 individual users—including the four custodians whose audio recordings were required to be produced under the December 2017 subpoena—and 2,087,789 recordings from speakerbox or “Hoot n’ Holler” lines. The deleted speakerbox calls also may have included subpoenaed calls: the December 2017 Subpoena called for *all* communications related to trading for four traders for an entire day, a day for which all their speakerbox calls with brokers and others were deleted.

Citi was not able to recover any of these deleted audio recordings.

2. The Configuration of Citi’s Audio Preservation System

Since 2001, Citi has used an audio vendor (referred to herein as “Audio Vendor”) to record and archive audio in connection with a variety of business activities. Audio Vendor is an industry leader for voice recording and retention, and many large financial institutions use Audio Vendor’s audio recording system (coined above as the “Audio Preservation System”). As

relevant to Citi and its affiliated North American swap dealers, when a phone subject to recording makes or receives a call, the Audio Preservation System, through “loggers,” creates an audio file of that call. After creating the audio file, the Audio Preservation System uses its storage center to archive the media onto filers, which are similar to external hard drives.

In 2014, and in connection with Citi’s adoption of recording and retention policies for covered swap dealers (the Citi Entities) to comply with Dodd-Frank regulatory requirements, Citi determined that its Audio Preservation System could not efficiently and reliably be utilized to implement targeted legal holds for particular custodians and time periods necessitated by recordkeeping requirements, regulatory inquiries, and litigation. Initially, Citi determined that, in the words of one employee, as a “stopgap measure,” it would indefinitely preserve audio recordings for all users subject to Dodd-Frank retention requirements. Contemporaneous documents confirm that Citi ultimately relied on this “stopgap measure” as its long-term solution, using the Audio Preservation System as its primary tool for indefinitely preserving audio and complying with its regulatory and other legal obligations relating to audio preservation.

The GVO group engaged Audio Vendor to assist in configuring the Audio Preservation System to implement the intended indefinite hold. In July 2014, one GVO group employee (“GVO Employee 1”) answered a supervisor’s question about whether all “Dodd Frank users” are on “indefinite hold” by stating they were, and “as long as we never run out of storage space, the calls will not actually delete.” Citi’s internal memoranda also show that at least some Citi employees understood the consequences of running out of storage space and the risk of deleting audio. As one March 2014 internal memorandum noted, if the System did not have the “required storage” it would begin to “purge” calls—and thus “will subject Citi to potential legal issues as a failure to comply with the Dodd Frank regulations.”

3. The Unaddressed Design Flaw in Citi’s Audio Preservation System

But running out of total available storage space was not the only storage-related risk posed by Citi’s Audio Preservation System. Rather, as a key GVO group employee (“GVO Employee 2”) noted in a September 2014 internal memorandum (the “2014 Memorandum”) to a senior manager (and supervisor of GVO Employee 1 and 2) (“GVO Manager”), the Audio Preservation System had a “design flaw” which could—and here ultimately did—cause the Audio Preservation System to delete audio recordings. The design flaw was that in some circumstances when available storage was limited the System would automatically delete audio without alerting staff that storage was limited and files would start being deleted.

In the normal course, when the System reached a certain specified threshold of used storage space (“Storage Threshold”)—in 2014, set at 80% of total storage capacity—the System’s First-in-First-Out function (“FIFO Function”) would attempt to automatically delete records for which the System “Retention Rule” had expired (i.e., for which the records had exceeded the specified minimum amount of time the records were required to be kept, which, in 2014 was set to 365 days). The Retention Rule period specified what records would be *eligible* for deletion. If there were no records eligible for deletion (i.e., no records with an expired

Retention Rule period), when the Storage Threshold was reached, the System would alert GVO staff who had a small window of time to add additional storage capacity to the System. However, if the FIFO Function located records that were eligible for deletion (i.e., for which the Retention Rule period had expired), the System would automatically delete that audio *without* informing staff and would continue to do so as long as there were documents eligible for deletion. GVO Employee 2 believed that this was, as set forth in the 2014 Memorandum to management, a “huge issue” and that if no actions were taken, the System would “start deleting here very, very soon.” GVO Employee 2 called the potential automatic deletions a “ticking time bomb effect.”

GVO Employee 2 sought to address the “ticking time bomb effect,” sending the 2014 Memorandum to other employees, including his supervisor, and the IT Senior Group Manager within the GVO group. GVO Employee 2 also made two System changes. First, GVO Employee 2 increased the Retention Rule for North American users’ audio files from one year to seven years. This change lengthened the time period before which audio files would become eligible for deletion. Second, GVO Employee 2 increased the Storage Threshold from 80% to 95%, thus permitting the System to use additional available storage and delaying activation of the FIFO Function automatic deletion. GVO Employee 2 took these steps in order to mitigate the risk of inadvertently deleting audio recordings.

While the above efforts were made to ensure the Audio Preservation System operated as intended, Citi did not take sufficient steps to ensure the ongoing reliability of the Audio Preservation System’s indefinite preservation of audio recordings. In 2015, Citi upgraded its Audio Preservation System to a newer version of the System. For unknown reasons, the Retention Rule in the upgraded System changed to two years (from the seven-year Retention Rule configured by GVO Employee 2); this exacerbated the risk of data deletions by the FIFO Function.

The time bomb identified by GVO Employee 2 exploded in 2018, when on or about October 13, 2018, the System reached the Storage Threshold of 95%, and the FIFO Function began to search for files that were exactly as old as the expired two-year Retention Rule. The FIFO Function then automatically deleted records that were exactly two years old in order to make space for additional new recordings. The FIFO Function continued to delete documents in this way, undetected, daily, for more than a month. The automatic deletions continued until November 16, 2018, when Citi took the System off line to determine what was causing the deletions. After reporting the deletions to the Division, Citi represented to the Division that it investigated the deletions and implemented numerous remedial measures.

4. Why Citi Failed to Preserve and Produce Responsive Audio

Multiple, compounding supervision failures led to Citi’s deletion of millions of audio files, including audio recordings responsive to the December 2017 subpoena.

First, supervisors and management at Citi failed to ensure that the GVO group had sufficient, appropriately trained staff to accomplish GVO’s mission. In October 2015, Citi’s

GVO lost two key employees, GVO Employees 1 and 2. GVO Employees 1 and 2 were the only employees who understood the risk of automatic deletion posed by the FIFO Function; without them or other employees with their awareness of the risk, Citi was unable to operate the System properly. In addition to GVO Employees 1 and 2, three other GVO employees departed Citi in the following eight months. These departures further limited Citi's ability to appreciate the limitations of the Audio Preservation System and generally burdened the GVO Department. As one GVO employee put it in a May 6, 2016 email to a GVO supervisor, "[w]ith the loss of over 50% of our team and the issues growing and everything under the sun being escalated 'just because' we do not have the resources to go through" the various issues facing the department "in a timely manner." The same employee noted that team had "not had the time to train properly" for some of the issues they were facing.

Second, Citi's remaining employees and management failed to recognize the risk of deletion caused by the FIFO Function. Specifically, senior Citi employees in the GVO group did not take appropriate steps to understand the circumstances under which the FIFO Function would actually delete audio files. GVO Manager's failure to recognize the risk of deletions is particularly noteworthy. In October 2015, shortly after the loss of GVO Employee 2, GVO Manager circulated GVO Employee 2's 2014 Memorandum. GVO Manager emphasized the need to respond to the key personnel losses by: (i) compiling all documentation about the Audio Preservation System, including documentation provided by the Audio Vendor during the 2015 upgrade, (ii) assigning additional people or resources to the day-to-day management of the System, and (iii) monitoring and planning for additional System storage capacity. Yet even as GVO Manager discussed the need to properly maintain the System, GVO Manager did not do anything to address the 2014 Memorandum's warnings about accidental deletions and the "ticking time bomb effect." Supervisors, including the GVO Manager, were made aware of the FIFO risk at the time of the 2014 Memorandum and were again informed of the risk in October 2015, when GVO Manager circulated the 2014 Memorandum to GVO group personnel. GVO group supervisors, however, still failed to fully understand the risk, implement a solution, or supervise staff in a way to prevent the FIFO Function deletion risk from actualizing, including, for example, failing to take appropriate steps to ensure that GVO staff knew how best to add additional storage capacity when the System was near Storage Thresholds or to ensure that the Retention Rule setting would not result in the deletion of audio intended to be preserved.

Third, certain important changes made to the Audio Preservation System were not documented. As described above, when the Audio Preservation System was updated in 2015, the Retention Rule was changed from the seven-year period, which had been implemented by GVO Employee 2 to reduce the risk of automatic deletions, to a two-year period. This change was not documented at the time, and Citi employees—including supervisors—failed to recognize that the changes to the System could result in the deletion of audio. Furthermore, Citi did not take sufficient steps to test or audit the changes to the System; nor did Citi take appropriate steps to implement System backups to ensure that audio recordings were successfully preserved.

Fourth, stakeholders were not informed of the risk of deletion caused by the FIFO Function. Citi employees and managers directly involved in the Audio Preservation System failed to recognize the circumstances under which the FIFO Function would delete audio files.

At no point—including when the 2014 Memorandum originally identified the deletion risk in stark terms—did GVO Manager or other GVO group staff and managers escalate to Citi management the risk of deletion posed by the System or otherwise inform Citi’s Legal Department or the Compliance, Governance, and Reporting Department about the risk of data deletion caused by the FIFO Function. Thus, among other consequences, Citi’s ability appropriately to respond to regulatory requests, including the Commission’s December 2017 subpoena—was compromised.

III. LEGAL DISCUSSION

A. Regulation 166.3—Failure To Supervise

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 *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 In the Matter of The Bank of Nova Scotia*, CFTC No. 20-26, 2020 WL 4926053 at *11 (CFTC Aug 19, 2020) (consent order) (finding that respondent failed to supervise its swap dealer business by, among other things, failing to supervise audio recordkeeping and failing to adequately supervise and train its personnel to ensure both the preservation and production of all audio recordings); *In the Matter of BGC Financial, L.P.*, CFTC No. 20-09, 2019 WL 6358480, at 9 (CFTC Nov. 22, 2019) (consent order) (respondent “failed to adopt an adequate supervisory system and failed to perform its supervisory duties diligently in violation of Regulation 166.3” by, among other things failing “to create sufficient policies and follow-on procedure to ensure complaint recordkeeping”).

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.

Citi violated Regulation 166.3 because it failed to diligently supervise the operations of the Audio Preservation System. Citi's supervisory system was inadequate because it lacked adequate procedures to detect and elevate risks in the Audio Preservation System, and it failed to perform its supervisory duties diligently. The failures adequately to oversee the Audio Preservation System are all the more serious given that Citi used the Audio Preservation System "stopgap" as a long-term solution to comply with regulatory and legal preservation and retention requirements.

Citi failed to supervise the Audio Preservation System by (a) failing to ensure that the GVO group was adequately staffed, including employing individuals with adequate technical knowledge of the System; (b) failing to detect, at the highest levels of the GVO group, the risks of deletions posed by the System and failing to take steps to address the risk of deletion (including, for example, failing to take appropriate steps to ensure that GVO staff knew how best to ensure that the Retention Rule setting would not result in the deletion of audio intended to be preserved); (c) failing to ensure procedures were in place to document, understand, and test changes to the Audio Preservation System; and (d) failing to have adequate procedures in place to ensure that other business functions—including the legal and compliance functions who used the Audio Preservation System to respond to regulatory inquiries—were made aware of the risk of deletion posed by the System.

Importantly, the supervision failures at issue here compromised Citi's ability to respond to the December 2017 subpoena. When Citi received the December 2017 subpoena, responsive audio recordings existed and were in possession of the bank. As such, Citi had an obligation to preserve and safeguard those documents from destruction. Division staff relied on Citi's representation that audio responsive to the December 2017 subpoena would be preserved. Had Division staff not relied on Citi's representation and agreed to defer production of audio responsive to the December 2017 subpoena, that audio may not have been destroyed. Moreover, Citi did not take any steps to collect the responsive audio until November 2018—nearly a year after the subpoena was issued—further increasing the likelihood that the design flaws here would, as they in fact did, lead to the destruction of audio responsive to the December 2017 subpoena.

During the Relevant Period, because all of the Citi Entities relied on Citi to operate and maintain the Audio Preservation System to record and preserve not only Citi's own audio but also the audio of its affiliated North American swap dealers, all of the Citi Entities violated Regulation 166.3 by failing to diligently supervise the operation of the System.

During the Relevant Period, Citi relied on the Audio Preservation System as its primary means of ensuring that audio recordings were maintained, both to comply with applicable Commission recordkeeping obligations and to comply with Commission document requests and Commission subpoenas, both for itself and its affiliated North American swap dealers. As such, Citi's maintenance of the Audio Preservation System, and its ability to maintain and produce documents, was central to all the Citi Entities, as Commission registrants.

IV. FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that Respondents violated Regulation 166.3, 17 C.F.R. § 166.3 (2019), during the Relevant Period.

V. OFFER OF SETTLEMENT

Respondents submitted the Offer in which they, without admitting or denying the findings and conclusions herein:

- A. Acknowledge service of this Order;
- B. Admit 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. Waive:
 - 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 they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012), and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2018), relating to, or arising from, this proceeding;
 - 7. Any and all claims that they 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. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer;

- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Respondents violated Regulation 166.3;
 2. Orders Respondents to cease and desist from violating Regulation 166.3;
 3. Orders Respondents to pay a civil monetary penalty in the amount of four million five hundred thousand dollars (\$4,500,000), plus post-judgment interest within ten days of the date of entry of this Order;
 4. Orders Respondents, and their 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; and

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondents shall cease and desist from violating Regulation 166.3.
- B. Respondents shall pay a civil monetary penalty in the amount of four million five hundred thousand dollars (\$4,500,000) ("CMP Obligation"), within ten days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

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

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

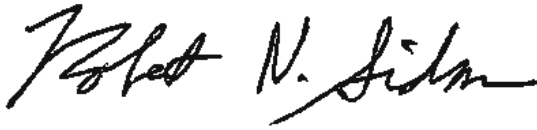
If payment is to be made by electronic funds transfer, Respondents shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondents and the name and docket number of this proceeding. The paying Respondents shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- C. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondents agree that neither they nor any of their successors and assigns, agents or employees under their 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 Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.
 2. Procedures and Controls Regarding Audio Retentions:

- a. Respondents represent that they have undertaken certain remedial steps to prevent the loss of audio recording in the future, including additional trainings for GVO employees and additional automated alerts in the Audio Preservation System to alert GVO employees of any anomalies in real time. Within ninety (90) days of the entry of this Order, Respondents shall develop procedures and controls sufficient to ensure that its employees responsible for preserving audio recordings shall take reasonable steps to preserve all audio recordings consistent with both Respondents regulatory obligations and business needs, to the extent that such procedures and controls have not already been implemented. These procedures and controls shall, at a minimum, provide for regular, periodic checks of the technology used to record and preserve audio recordings.
 - b. For a period of three years following the entry of this order, in response to any request for audio recordings by Commission staff, including investigative subpoenas, Respondents shall (1) create a copy of all requested audio and maintain that copy segregated from other systems until directed otherwise by Commission staff and (2) provide written notice to Commission staff by an appropriate employee describing the audio that was collected, certifying that it represented a full response to the request in question, verifying that the recordings did in fact capture the audio that the systems were intended to record, identifying any gaps in the collection or preservation of the audio, describing the manner in which the audio was preserved, and certifying that the audio was preserved.
3. Cooperation, in General: Respondents shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondents shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, this action.
4. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission of any partial payment of Respondents' CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
5. Change of Address/Phone: Until such time as Respondents satisfy in full their CMP Obligation as set forth in this Order, Respondents 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 as of this date.

By the Commission.

A handwritten signature in black ink, reading "Robert N. Sidman". The signature is written in a cursive style with a horizontal line underneath it.

Robert N. Sidman
Deputy Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 28, 2020