

II. FINDINGS

The Commission finds the following:

A. SUMMARY

Reporting is at the heart of the Commission's market and financial surveillance programs, which are critical to the Commission's mission to protect market participants and promote market integrity, and helps it to fulfill its Congressional mandate of monitoring systemic risk. Accurate swap data is essential to effective fulfillment of the regulatory functions of the Commission, including meaningful surveillance and enforcement programs.

As a provisionally registered swap dealer ("SD"), Respondent, as well as nine of its affiliates,² all of which were also provisionally registered swap dealers, was required to comply with certain reporting requirements related to their swap transactions. Since becoming a provisionally registered SD, Respondent failed to accurately report certain data to a swap data repository ("SDR") under Part 43 or Part 45 of the Regulations. For example, Respondent submitted hundreds of thousands of swaps containing inaccurate data for certain primary economic terms ("PET") data fields,³ including fields for Unique Swap Identifiers ("USIs"), Legal Entity Identifiers ("LEIs"), notional amounts, execution venue, and price. In addition, Respondent reported nearly half of its swaps for one asset class to the SDR outside of the time parameters required by Part 43 of the Regulations.

In accepting Morgan Stanley's Offer, the Commission recognizes Morgan Stanley's substantial cooperation with the Division of Enforcement's ("Division") investigation of this matter in the form of a reduced civil monetary penalty.

B. RESPONDENT

Morgan Stanley Capital Services LLC is a Delaware limited liability company with its principal place of business in New York, New York, and has been provisionally registered as a swap dealer with the Commission since December 31, 2012.

² The nine affiliates are Morgan Stanley & Co. International PLC, Morgan Stanley Capital Products LLC, Morgan Stanley & Co. LLC, Morgan Stanley Bank NA, Morgan Stanley Capital Group Inc., Morgan Stanley Bank International Limited, Morgan Stanley Mexico Casa De Bolsa SA De CV, Morgan Stanley MUFG Securities Co., Ltd., and Morgan Stanley Derivative Products Inc. (which deregistered in 2017). Respondent and these affiliates shared the same swap data reporting system. As a result, the swap data errors identified in this Order include the swap data reporting errors of Respondent's nine affiliates.

³ PET data reporting includes the reporting of approximately sixty swap data elements, varying by asset class, enumerated in appendix 1 to part 45.

C. FACTS

1. Respondent's Misreporting of Certain Swap Data

As a provisionally registered SD, Respondent is a reporting counterparty and thus is required to report certain data about swap transactions to an SDR. Since December 31, 2012, Respondent inaccurately reported swap data under Part 43 or Part 45 of the Regulations in one required data field—and sometimes in multiple required data fields—for at least approximately three million swaps. On some days, these errors impacted hundreds of thousands of swaps, across all five asset classes.⁴

The errors stem from twenty-nine issues that resulted in Respondent's omission of swap data or submission of inaccurate swap data to the SDR, and, consequently, potentially impeded the Commission's ability to properly oversee the swap markets.

In general, Respondent's swap data reporting errors included the failure to report accurate PET data for the following fields, among others: (1) the LEI field, a unique code assigned to swap counterparties and entities in accordance with the standards set by the Global Legal Entity Identifier System; (2) the USI field, a unique alphanumeric code generated for each swap, and used by the Commission to follow the swap throughout its life cycle, among other things; (3) notional amounts; (4) execution venue LEI; and (5) price notation.

Respondent's swap reporting system generated reporting errors in each of the five asset classes. For example:

- More than 1 million FX option and cash swaps were reported without required swap-execution-facility ("SEF") identifiers or correct price notations;
- More than 700,000 equity swaps were reported without valuation data for certain life cycle events or with incorrect valuations;
- More than 360,000 credit swaps were reported with inaccurate effective dates or without required SEF identifiers, and thousands of credit swaps (relating to pre-allocated block trades and pre-cleared trades) were reported without an accurate LEI;
- More than 800,000 rates swaps were reported with omissions or errors. For example, approximately 340,000 swaps were reported as allocated trades without the USI of the initial block trade. In addition, approximately 275,000 swaps were reported with the incorrect effective date. Respondent also relied on a third-party to report valuations for certain swaps, but valuations for approximately 275,000 swaps were not reported at all. Finally, thousands of rates swaps (relating to pre-allocated block trades and pre-cleared trades) were reported without an accurate LEI; and

⁴ The term "asset class" refers to the "broad category of goods, services or commodities . . . with common characteristics underlying a swap." Regulation 45.1, 17 C.F.R. § 45.1 (2019). The asset classes include credit, equity, foreign exchange (excluding cross-currency) ("FX"), interest rates (including cross-currency) ("rates"), other commodity ("commodities"), and other such asset classes as may be determined by the Commission." *Id.*

- More than 100,000 commodity swaps were reported with omissions or errors. Specifically, more than 80,000 commodity swaps were reported without notional information for the floating leg of the swap. In addition, approximately 25,000 swaps were reported with a negative notional amount.

2. Respondent’s Late Reporting of Swap Data

As a provisionally registered swap dealer, Respondent is required to comply with certain requirements for the real-time public reporting and public availability of swap transaction data, including the requirement to report a publicly reportable swap transaction to an SDR as soon as technologically practicable after the swap transaction is executed. However, Respondent repeatedly failed to do so with respect to swaps in at least one asset class. For example, at least as of February 2019, Respondent reported nearly half of its new interest rate swaps more than fifteen minutes after execution. This percentage was even higher for Respondent’s reporting of post-trade allocation events.

3. Respondent’s Cooperation

At the outset of the Division’s investigation and on its own initiative Respondent hired an outside expert to review its swap data reporting, and advised the Division that it had done so. Respondent thereafter voluntarily provided the Division with updates on the status of that review, and ultimately with the complete results of that review, which included the issues identified above. Respondent also engaged in open and regular communication with the Division throughout the investigation, and performed significant additional analyses of Respondent’s swap reporting at the Division’s requests. Respondent’s cooperation allowed the Division to conserve time and substantial resources.

III. LEGAL DISCUSSION

The Act states that, with regard to real-time data, “[p]arties to a swap . . . shall be responsible for reporting swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.” Section 2(a)(13)(F) of the Act, 7 U.S.C. § 2(a)(13)(F) (2018). The Act also requires that real-time data for each reportable swap (whether cleared⁵ or uncleared) be reported to a registered SDR. Section 2(a)(13)(G) of the Act, 7 U.S.C. § 2(a)(13)(G) (2018).

Specifically, Regulation 43.4(a) states that “[s]wap transaction and pricing information shall be reported to a registered [SDR] so that the [SDR] can publicly disseminate swap transaction and pricing data in real-time” in the form and manner set forth in appendix A to Part 43. 17 C.F.R. § 43.4(a) (2019). Further, “[a] reporting party shall report any publicly reportable swap transaction to a registered [SDR] as soon as technologically practicable⁶ after

⁵ A “cleared swap” is defined as “any swap that is, directly or indirectly, submitted to and cleared by a derivatives clearing organization.” Section 1a(7) of the Act, 7 U.S.C. § 1a(7) (2018).

⁶ The phrase “as soon as technologically practicable” means “as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants.” Regulation 43.2, 17 C.F.R. § 43.2 (2019). Moreover, in the preamble to Part 43, the Commission acknowledged that swap dealers are

such publicly reportable swap transaction is executed.” Regulation 43.3(a)(1), 17 C.F.R. § 43.3(a)(1) (2019).

Regulation 45.3(b)(1)(i) and (c) set forth the requirements for reporting creation data, including PET data, including LEIs and USIs, among other fields. 17 C.F.R. §§ 45.3(b)(1)(i), (c) (2019).

Regulation 45.4(d)(1)(i) requires registered entities and swap counterparties to report continuation data for uncleared swaps, including the requirement to report life cycle event data such as LEIs. 17 C.F.R. § 45.4(d)(1)(i) (2019). In addition, Regulation 45.4(d)(2)(i) requires registered entities to report end-of-day valuation data for uncleared swaps.⁷ 17 C.F.R. § 45.4(d)(2)(i) (2019).

Under Regulation 45.5(b), for each off-facility swap where the reporting counterparty is a swap dealer, the swap dealer is required to create and transmit a USI. 17 C.F.R. § 45.5(b) (2019). In addition, “[e]ach swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping and all swap data reporting...by the use of a [USI], which shall be created, transmitted, and used for each swap as provided in...this section.” 17 C.F.R. § 45.5.

Reporting counterparties are also required to report valid LEIs for each counterparty to a reportable swap transaction pursuant to Regulation 45.1. In addition, Regulation 45.6 states that “[e]ach counterparty to any swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping and all swap data reporting pursuant to this part by means of a single [LEI].” 17 C.F.R. § 45.6 (2019).

“The accuracy and completeness of swap reporting are critical to the Commission’s mission to protect market participants and to ensure market integrity.” *U.S. Commodity Futures Trading Comm’n v. Deutsche Bank AG*, No. 1:16-cv-6544 (WHP), 2020 WL 4611985, at *8 (S.D.N.Y. June 17, 2020) (citing *In re Société Générale Int’l Ltd.*, CFTC No. 19-38, 2019 WL 4915485, at *6 (Sept. 30, 2019) (consent order) (collecting cases). Market participants rely upon the public availability of swap data for price discovery purposes. *Id.* The Commission, in turn, requires complete and accurate reporting data to engage in meaningful oversight of the swaps market. *Id.*

As set forth above, Respondent failed to accurately report certain swap data. As a result, Respondent violated 7 U.S.C. §§ 2(a)(13)(F) and (G), and 17 C.F.R. §§ 43.3(a), 45.3, 45.4, 45.5, and 45.6.

“more likely to have the infrastructure to report their swap transaction and pricing data to an SDR faster than other categories of market participants.” 77 Fed. Reg. 1182 (Jan. 9, 2012).

⁷ The term “valuation data” includes “all of the data elements necessary to fully describe the daily mark of the transaction, pursuant to [7 U.S.C. § 6s(h)(3)(B)(iii)], and to [17 C.F.R. § 23.431] of this chapter if applicable.” Regulation 45.1, 17 C.F.R. § 45.1 (2019).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent violated Sections 2(a)(13)(F) and (G) of the Act, 7 U.S.C. §§ 2(a)(13)(F), (G) (2018), and Regulations 43.3(a), 45.3, 45.4, 45.5, and 45.6, 17 C.F.R. §§ 43.3(a), 45.3, 45.4, 45.5, 45.6 (2019).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- 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 (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, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
 - 8. Any claims of double jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;

- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Respondent violated Sections 2(a)(13)(F) and (G) of the Act, 7 U.S.C. §§ 2(a)(13)(F), (G) (2018), and Regulations 43.3(a), 45.3, 45.4, 45.5, and 45.6, 17 C.F.R. §§ 43.3(a), 45.3, 45.4, 45.5, 45.6 (2019).
 2. Orders Respondent to cease and desist from violating Sections 2(a)(13)(F) and (G) of the Act and Regulations 43.3(a), 45.3, 45.4, 45.5, and 45.6.
 3. Orders Respondent to pay a civil monetary penalty in the amount of five million dollars (\$5,000,000), plus post-judgment interest; and
 4. Orders Respondent and its successors and assigns to comply with the conditions consented to in the Offer and as set forth in Part VI of this Order.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Sections 2(a)(13)(F) and (G) of the Act, 7 U.S.C. §§ 2(a)(13)(F), (G) (2018), and Regulations 43.3(a), 45.3, 45.4, 45.5, and 45.6, 17 C.F.R. §§ 43.3(a), 45.3, 45.4, 45.5, 45.6 (2019).
- B. Respondent shall pay a civil monetary penalty in the amount of five million dollars (\$5,000,000) ("CMP Obligation") within ten days of the date of 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).

Respondent shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, 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, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- C. Respondent and its successors and assigns shall comply with the following conditions and obligation set forth in the Offer:
1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents, or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall comply with this agreement, 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.
 2. Cooperation, in General: Respondent 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. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.
 3. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
 4. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.
 5. Undertaking: The Commission understands that Respondent represents that it and its affiliates have made significant efforts to remediate the swap data reporting errors that are the subject of this Order.

To establish that those remediation efforts have been successful, within 60 days of the entry of this Order, Respondent shall retain at its own expense, in consultation with and subject to the approval of the Division, a qualified outside consultant (the “Consultant”), to perform a review to verify that Respondent has remediated the root causes of the twenty-nine swap data issues specified in Section II.C.1. of this Order (the “Issues”).

The Consultant shall perform the review of the remediation of the Issues by sampling up to three days of swap reporting data of Respondent and its affiliates such that in the discretion of the Consultant it shall have sufficient data to perform its review.

Within 180 days of being retained, the Consultant shall complete its review and communicate the final results in a written report (“Report”) to Respondent and the Division, which shall include an explanation of the Consultant’s methodology and any assumptions it has applied, and the results of the review. The Consultant’s work product and Consultant’s communications with Respondent and its affiliates shall be made available promptly to the Division upon the Division’s request.

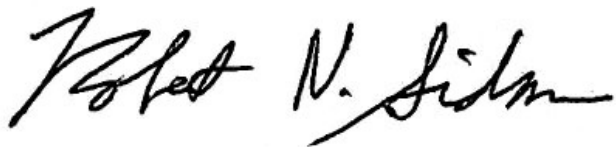
Within 9 months after receiving the Report, Respondent shall remediate the root causes of any deficiencies identified in the Report unless (i) within 60 days after receiving the Report, Respondent advises the Consultant and the Division that Respondent disputes the Consultant’s determination that one or more deficiencies exist, and (ii) the Consultant agrees with Respondent and notifies the Division that it is withdrawing its determination. If after this 60-day period the Consultant determines a deficiency still exists, Respondent shall remediate the root cause of any such deficiency unless the Division concludes that remediation is not necessary.

The Division shall not recommend to the Commission an enforcement action against Respondent or its affiliates identified in footnote 2 above for violations of the Act or Regulations based on any such deficiency so long as (i) within 9 months after receiving the Report, Respondent verifies to the Division in writing that it has remediated the root cause of any such deficiency including by noting the root cause of the deficiency and the date of the remediation or (ii) the Division concludes that remediation is not necessary.

Upon request by Respondent, the Division shall have the discretion to extend the time periods in this paragraph 5.

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 30, 2020