

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. Accurate swap data is thus essential to effective fulfillment of the regulatory functions of the Commission, including meaningful surveillance and enforcement programs.

As a swap execution facility ("SEF"), Refinitiv is required to comply with certain reporting requirements related to swap transactions it executes. For example, Part 45 of the Regulations, 17 C.F.R. pt. 45 (2020), specifies requirements for reporting of swap creation and continuation data to a registered swap data repository ("SDR"). During the Relevant Period Refinitiv violated Sections 2(a)(13)(G) and 4r(a)(1) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 6r(a)(1) (2018), and Regulation 45.3, 17 C.F.R. § 45.3 (2020), by failing to report to an SDR swap creation data related to two primary economic terms for hundreds of thousands of swap transactions.

In accepting Respondent's Offer, the Commission recognizes the self-reporting and substantial cooperation of Refinitiv in connection with the Division of Enforcement's (the "Division") investigation of this matter. The Commission also acknowledges Respondent's representations concerning its remediation in connection with this matter. The Commission's recognition of Respondent's self-reporting, substantial cooperation, and appropriate remediation is further reflected in the form of a substantially reduced penalty.

B. RESPONDENT

Refinitiv and its predecessor entity have operated a SEF since October 2013. Refinitiv's predecessor entity received its provisional registration on September 27, 2013 and its full registration on January 22, 2016. Refinitiv operated under the name of its predecessor entity between September 2013 and February 2019.

C. FACTS

1. **Refinitiv's Failure to Correctly Report Swap Transactions to an SDR**

Since receiving its provisional registration, Refinitiv failed to implement processes and controls to ensure that its swap data reporting met the requirements of Part 45 of the Regulations, 17 C.F.R. pt. 45 (2020). Rather than designing its reporting systems to meet these requirements, Refinitiv designed its reporting systems to meet the specifications of its SDR, which identified certain fields required by Part 45 as optional.

As a result, during the Relevant Period, Refinitiv failed to report certain swap creation data for hundreds of thousands of trades. The missing swap creation data includes Part 45 primary economic terms such as the financial entity status and the U.S. person indicator for each

counterparty (the “Missing Swap Data”).

On multiple occasions, Refinitiv knew, or had reason to suspect, that it was not complying with Part 45 reporting requirements but failed to detect and remedy its noncompliance. For example, Refinitiv acknowledged in its 2013 annual Chief Compliance Officer report required by Regulation 37.1501(e), 17 C.F.R. § 37.1501(e) (2020), that Refinitiv: (1) had failed to report whether and to what extent swaps were collateralized, another Part 45 primary economic term; (2) had reason to suspect that its reporting systems were failing to report other required swap data; and (3) would undertake a compliance review of its reporting systems to address those suspicions. This compliance review of its reporting systems was completed ten months later (the “2015 Compliance Review”) during Refinitiv’s application for full registration, and failed to detect Refinitiv’s ongoing reporting failures. As a result, Refinitiv’s reporting failures continued until August 2020.

Refinitiv took steps to address its reporting failures only after they were reported to Refinitiv by two of its clients. First, on April 20, 2020, Client A informed its Refinitiv relationship manager that the National Futures Association (“NFA”) had found that Refinitiv was not reporting the Missing Swap Data to its SDR for trades Client A executed on Refinitiv. The Refinitiv relationship manager escalated the matter to Refinitiv compliance staff who mistakenly concluded that the Missing Swap Data was not required by Part 45. In reaching that conclusion, Refinitiv compliance staff failed to review or consider the requirements of Part 45. Instead, Refinitiv compliance staff simply reviewed swap data Refinitiv sent its SDR the previous day, which omitted the Missing Swap Data (though it contained empty fields which should have contained the Missing Swap Data), and assumed on that basis that the NFA and Client A were mistaken, and that the Missing Swap Data was not required to be reported. Refinitiv took no further steps to address the reporting issue identified by Client A.

Second, on May 11, 2020, Client B informed a Refinitiv transactions specialist that Refinitiv was not reporting the Missing Swap Data to its SDR for trades Client B executed on Refinitiv. The matter was escalated to Refinitiv compliance staff, who again failed to address the issue. Refinitiv compliance staff—instead of reviewing the requirements of Part 45—relied on a document prepared in connection with the 2015 Compliance Review. That document also mistakenly concluded that the Missing Swap Data need not be reported to an SDR. Refinitiv compliance staff then again mistakenly concluded that the Missing Swap Data was not required and Refinitiv took no further steps to address the reporting issue identified by Client B.

On May 18, 2020, Refinitiv expressed to Client A its disagreement with the NFA’s assessment. Client A directed Refinitiv to the relevant provisions of Part 45. Only then did Refinitiv begin to take steps to address its reporting failures.

2. Refinitiv's Self-Reporting and Cooperation with the Division's Investigation

Refinitiv self-reported its swaps data reporting failures to the Commission first by contacting the Division of Market Oversight on June 4, 2020 and then by contacting the Division on July 20, 2020. Afterwards, Refinitiv cooperated substantially with the investigation the Division opened in response. Among other things, Refinitiv conducted an internal investigation and provided specific and detailed information to the Division regarding the reporting deficiencies its internal investigation and external audit revealed.

Refinitiv also represents that it has taken substantial steps towards remediation, including: (1) system updates resolving the reporting failures; (2) back-reporting all Missing Swap Data; (3) hiring outside counsel to investigate the cause of the reporting failures; (4) conducting an internal audit of Refinitiv's reporting systems; (5) hiring an external consultant to perform a review of Refinitiv's policies and procedures, assess compliance issues, and propose improvements; (6) providing additional training on reporting requirements; and (7) developing a plan to implement the improvements recommended by the external consultant, including changes to governance and process, and the creation of new policies and procedures that address trade reporting.

III. LEGAL DISCUSSION

A. Refinitiv Failed to Report Certain Required Swap Data in Violation of Sections 2(a)(13)(G) and 4r(a)(1) of the Act and Regulation 45.3

Sections 2(a)(13)(G) and 4r(a)(1) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 6r(a)(1) (2018), require that swaps be reported to SDRs. Section 21(b)(1)-(3) of the Act, 7 U.S.C. § 24a(b)(1)-(3) (2018), directs the Commission to prescribe standards for swap data recordkeeping and reporting. Part 45 of the Regulations, 17 C.F.R. pt. 45 (2020), implements the swap data reporting rules by, among other things, setting forth the swap data elements that must be reported to SDRs, including primary economic terms and confirmation data. *See, e.g.*, Regulations 45.1, 45.3, pt. 45, app. 1, 17 C.F.R. §§ 45.1, 45.3, pt. 45, app. 1.

These swap data reporting provisions were designed to enhance transparency, promote standardization, and reduce systemic risk. The accuracy and completeness of swap reporting are critical to the Commission's mission to protect market participants and to ensure market integrity. *See, e.g., In re Ice Futures U.S.*, CFTC No. 15-17, 2015 WL 1276463, at *1, *5 (Mar. 16, 2015) (consent order).

During the Relevant Period, Refinitiv failed to report to an SDR the Missing Swap Data for hundreds of thousands of swaps transactions. As a result of these reporting failures, Refinitiv violated Sections 2(a)(13)(G) and 4r(a)(1) of the Act and Regulation 45.3.

B. Refinitiv's Liability for the Acts of Its Employees

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 (2020), provide that the act, omission, or failure of any official, agent, or other

person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust. Pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2, strict liability is imposed on principals for the actions of their agents. *See, e.g., Dohmen-Ramirez & Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988); *Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986).

The foregoing acts, omissions, and failures of Refinitiv's employees occurred within the scope of their employment, office, or agency with Refinitiv; therefore, pursuant to Section 2(a)(1)(B) of the Act, and Regulation 1.2, Refinitiv is liable for those acts, omissions, and failures in violation of the Act and Regulations.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent violated Sections 2(a)(13)(G) and 4r(a)(1) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 6r(a)(1) (2018), and Regulation 45.3, 17 C.F.R. § 45.3 (2020).

V. OFFER OF SETTLEMENT

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

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission to all the matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on a 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 (2020), 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, (“SBREFA”), Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat 847-74 (codified as amended 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 upon 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; and
- E. Consents, solely on the basis of the Offer, to the Commission’s entry of this Order that:
1. Makes findings by the Commission that Respondent violated Sections 2(a)(13)(G), 4r(a)(1) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 6r(a)(1) (2018), and Regulation 45.3, 17 C.F.R. § 45.3 (2020);
 2. Orders Respondent to cease and desist from violating Sections 2(a)(13)(G) and 4r(a)(1) of the Act and Regulation 45.3;
 3. Orders Respondent to pay a civil monetary penalty in the amount of \$650,000, plus post-judgment interest within ten days of the date of entry of this Order; and
 4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and 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)(G) and 4r(a)(1) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 6r(a)(1) (2018), and Regulation 45.3, 17 C.F.R. § 45.3 (2020).
- B. Respondent shall pay a civil monetary penalty in the amount of \$650,000, (“CMP Obligation”). If the CMP Obligation is not paid in full within ten days of the date of entry of the Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of the Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of the Order pursuant to 28 U.S.C. § 1961 (2018).

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, Respondent shall make the payment payable to the Commodity Futures Trading Commission, and sent to the address below:

CFTC
C/O ESC/AMK-326; RM 265
6500 S. MacArthur Blvd.
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, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies Respondent and the name and docket number of this proceeding. Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Remediation: Respondent will continue to implement and improve its internal controls and procedures in a manner reasonably designed to ensure the accuracy and integrity of its swaps reporting; and to remediate the currently known swap reporting deficiencies, including those that are the subject matter of this Order. Specifically, Respondent undertakes to:
 - a. Enhance Respondent's supervisory program, policies, procedures and controls in a manner reasonably designed to ensure compliance with the reporting requirements of Section 2(a)(13)(G) and 4r(a)(1) of the Act and Parts 43 and 45 of the Regulations, 17 C.F.R. pts. 43, 45 (2020); and,
 - b. Provide additional training to relevant personnel on the reporting requirements of Section 2(a)(13)(G) and 4r(a)(1) of the Act and Parts 43 and 45 of the Regulations.
 2. Compliance with Undertakings: Within 120 days of the entry of this Order, Respondent shall make a report to the Division explaining its progress towards compliance with the Undertakings set forth herein. Within one year of the entry of this Order, Respondent shall submit a report to the Division, explaining how it has complied with the Undertakings set forth herein. The report shall attach copies of and describe the internal controls, policies and procedures that have been designed and implemented to satisfy the Undertakings, along with a report on the status of the remediation efforts.
 3. Public Statements: Respondent agrees that neither it nor any of its successors or 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 factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party.

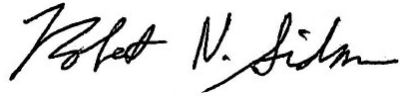
Respondent and its successors and assigns shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.

- D. Cooperation, in General: Respondent shall cooperate fully and expeditiously with the Commission, including the Division and any other governmental agency in this action, and in any current or future Commission investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto for a period of three years. As part of such cooperation, Respondent agrees to:
1. preserve and produce to the Commission in a responsive and prompt manner, as requested by the Division's staff, all non-privileged documents, information, and other materials wherever located, subject to applicable laws and regulations, in the possession, custody, or control of Respondent;
 2. accept service by mail, electronic mail, or facsimile transmission of notices or subpoenas for documents and/or testimony at depositions, hearings, or trials;
 3. appoint Respondent's attorney as agent to receive service of such notices and subpoenas; and
 4. waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules in connection with requests or subpoenas of the Division's staff.
- E. 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.
- F. 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.
- G. Until such time as Respondent satisfies in full its CMP Obligation, upon the commencement by or against Respondent of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Respondent debts, all notices to creditors required to be furnished to the Commission under Title 11 of the United States Code or other applicable law with respect to such insolvency, receivership bankruptcy or other proceedings, shall be sent to the address below:

Secretary of the Commission
Legal Division
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington, DC 20581

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

By the Commission.



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

Dated: September 27, 2021