

**UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION**

**RECEIVED CFTC**



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**9:33 am, Mar 15, 2022**

**In the Matter of:** )  
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 **ED&F Man Capital Markets, Ltd.,** )  
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 **Respondent.** )  
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**CFTC Docket No. 22-13**

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 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 from February 7, 2014 through September 2019, and to a lesser extent through July 31, 2021 for certain conduct described herein, ED&F Man Capital Markets, Ltd. (“MCML” or “Respondent”) violated Sections 2(a)(13)(F) and (G), 4s(h)(1)(B) and 4s(h)(3)(B)(ii) and (iii)(II) and (C) of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 2(a)(13)(F) and (G), 6s(h)(1)(B) and 6s(h)(3)(B)(ii) and (iii)(II) and (C), and Regulations 43.3(a)(1) and (3), 43.4(a), 45.3(b) and (c), 45.4, 45.5, 45.6, 45.14(a), 23.431(a)(3)(i) and (ii), 23.433 and 23.602, 17 C.F.R. §§ 23.431(a)(3)(i) and (ii), 23.433 and 23.602 (2021); 17 C.F.R. 43.3(a)(1) and (3), 43.4(a), 45.3(b) and (c), 45.4, 45.5, 45.6, 45.14(a), (2020) (amended 2021)<sup>1</sup>, of the Commission Regulations (“Regulations”) promulgated thereunder. Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent 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, Respondent 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, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.<sup>2</sup>

<sup>1</sup> The Commission amended Parts 43, 45, and 49 on November 25, 2020, with the new regulations becoming effective on January 25, 2021. Certain Swap Data Repository and Data Reporting Requirements, 85 FR 75601 (Nov. 25, 2020). The amendments did not affect the substantive requirements at issue in this order.

<sup>2</sup> Respondent 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. Respondent 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. Respondent does not

## II. FINDINGS

The Commission finds the following:

### A. **SUMMARY**

MCML provisionally registered as a Swap Dealer (“SD”) on February 7, 2014. As a provisionally registered SD, MCML was required to comply with certain reporting requirements related to its swaps transactions set forth in Part 43 and Part 45 of the Regulations, 17 C.F.R. pts. 43 and 45 (2021), and with the Business Conduct Standards applicable to SDs set forth in Part 23 of the Regulations, 17 C.F.R. pt. 23 (2021). From February 7, 2014 to September 2019, and to a lesser extent through July 31, 2021, MCML failed to report and/or failed to accurately report certain data for hundreds of thousands of swaps transactions to a swaps data repository (“SDR”) in violation of Sections 2(a)(13)(F) and (G) of the Act, 7 U.S.C. §§ 2(a)(13)(F) and (G), and Regulations 43.3(a)(1) and (3), 43.4(a), 45.3(b) and (c), 45.4, 45.5, 45.6 and 45.14(a), 17 C.F.R. §§ 43.3(a)(1) and (3), 43.4(a), 45.3(b) and (c), 45.4, 45.5, 45.6, 45.14(a) (2020) (amended 2021).

In addition, MCML failed to disclose to its swaps counterparties (“CPs”) certain material information in violation of two provisions of the Business Conduct Standards applicable to SDs. *First*, from February 2014 through January 2018, proprietary traders trading on behalf of an MCML affiliate, ED&F Man Professional Trading Services Inc. (“MPT”), had access to the trading books and trading positions of MCML’s swap traders, and MCML’s swap traders had access to the trading books and trading positions of MPT’s proprietary traders. This was a conflict of interest that MCML failed to disclose to its swaps CPs in violation of Sections 4s(h)(3)(B)(ii) and (C) of the Act, 7 U.S.C. §§ 6s(h)(3)(B)(ii) and (C), and Regulations 23.431(a)(3)(ii) and 23.433, 17 C.F.R. §§ 23.431(a)(3)(ii) and 23.433 (2021). *Second*, during the period February 2014 through September 2019, and to a lesser extent until April 2021, MCML failed to disclose required pre-trade mid-market marks (“PTMMMs”) in violation of Section 4s(h)(3)(B)(iii)(II) of the Act, 7 U.S.C. §§ 6s(h)(3)(B)(iii)(II), and Regulation 23.431(a)(3)(i), 17 C.F.R. § 23.431(a)(3)(i) (2021).

Finally, from February 2014 through September 2019, MCML’s managers failed to supervise diligently its swaps business and all activities related to its swaps business performed by MCML’s employees and agents with respect to its swaps data reporting obligations under Parts 43 and 45 of the Regulations, and its conflict of interest and PTMMM disclosure obligations under Part 23 of the Regulations, in violation of Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B), and Regulation 23.602, 17 C.F.R. § 23.602 (2021).

In September 2019, MCML implemented remedial measures to correct deficiencies in its swaps data reporting and PTMMM disclosure compliance. While those remedial measures have been largely successful, some swaps data reporting and PTMMM disclosure compliance deficiencies remained until July and April 2021, respectively.

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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.

In accepting Respondent's Offer, the Commission recognizes the substantial cooperation of MCML with the Division of Enforcement's 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 substantial cooperation and appropriate remediation is further reflected in the form of a reduced penalty.

## **B. RESPONDENT**

Respondent MCML is a non-U.S. SD organized under the laws of the United Kingdom, with an office in London. MCML was provisionally registered with the Commission as an SD on February 7, 2014. Respondent's swaps business is focused on metals and foreign currencies ("FX"). Its CPs include U.S. persons.

## **C. FACTS**

### **1. The NFA 2018 Audit**

In June 2018, the National Futures Association ("NFA") notified MCML of its intent to conduct a routine audit of MCML's swaps business and requested production of documents. In August 2018, MCML disclosed to the NFA and other relevant regulators that MCML provided incomplete or inaccurate information to an SDR with respect to its metals and FX swaps transactions, failed to disclose to its CPs a conflict of interest involving MPT's proprietary traders, and failed to provide to its U.S. CPs the required PTMMMs. Soon thereafter, an outside consultant retained on behalf of MCML issued a preliminary report, confirming, among other things, that MCML had failed to comply with a number of swaps data reporting requirements under the Act and Regulations with respect to both metals and FX swaps, and had done so since the date of its provisional registration as an SD in February 2014. MCML provided a copy of the consultant's preliminary report to the NFA and to the Commission's Division of Swap Dealer and Intermediary Oversight. In January 2019, the NFA issued an audit report identifying, among other things, MCML's swaps data reporting failures, its failure to disclose a material conflict of interest, its failure to provide PTMMMs, and its failures to diligently supervise.

### **2. Swaps Data Reporting Deficiencies**

During the period February 2014 to July 2021 (the "SDR Relevant Period"), MCML failed to fully report and/or failed to accurately report to an SDR certain swaps data in its primary asset classes of metals and FX swaps. From February 2014 through September 2019, MCML's swaps data reporting failures involved hundreds of thousands of swaps. For example, MCML entirely failed to report some uncleared swaps, including swaps with its two prime brokers and four liquidity providers. For other swaps, MCML failed to report real-time data as soon as technologically practicable, and failed to report the primary economic terms, confirmation data and continuation data (including life-cycle data) of uncleared swaps. For reports that MCML made to an SDR during the SDR Relevant Period, MCML failed to submit all of the data required by the Act and Regulations, including the name of the CP, U.S. person indicators, unique swap identifiers and legal entity identifiers. For other reports that MCML submitted to an SDR during the SDR Relevant Period, MCML submitted inaccurate information, including incorrect timestamps, inaccurate trade quantities and inaccurate maturity dates.

MCML also failed to link related swaps, to correctly report metals swaps termination dates, and to correct errors and omissions in its swaps data reporting.

MCML implemented remedial measures to address deficiencies in its swaps data reporting in September, 2019. Thereafter, MCML's swaps data reporting failures continued through July 2021, though to a substantially lesser extent than during the prior time period.

In short, during the SDR Relevant Period, MCML either failed to report or misreported to an SDR over 380,000 FX and metals swaps.

### **3. Conflict of Interest Disclosure Failures**

From February 7, 2014 through January 2018, the global head of MCML's FX swaps trading desk also oversaw trading staff executing proprietary trades on behalf of MPT. Traders executing proprietary trades on behalf of MPT also provided services in support of MCML's FX business, facilitating trades opposite MCML's customers. During that time period, seven of MPT's proprietary traders had physical and electronic access to MCML's proposed swaps trades, including information indicating the nature of the orders that MCML's swaps customers and eventual CPs intended to place. MCML did not disclose this conflict of interest to its U.S. swaps CPs during the February 7, 2014 through January 2018 time period.

In January 2018, MCML identified the conflict and remediated by segregating the MPT- and MCML- assigned traders.

### **4. PTMMM Disclosure Failures**

During the period February 2014 to April 2021 (the "PTMMM Relevant Period"), MCML failed to provide required PTMMMs to some of its CPs in connection with numerous metals and FX swaps for which no third-party trading platform provided the mark. From February 2014 to September 2019, MCML experienced systemic failures in its PTMMM disclosure process. In September 2019 and in early 2020, MCML implemented remedial measures to address some of those deficiencies. Thereafter, until April 2021, MCML continued to fail to disclose the required PTMMM to some of its CPs, though to a substantially lesser extent than during the earlier time period. Upon discovering this, MCML implemented additional remedial measures in April 2021.

The Commission's Division of Swap Intermediary Oversight has issued certain conditional no-action relief to SDs and major swap participants ("MSPs") from PTMMM disclosure requirements for limited types of FX transactions. *See, e.g.*, CFTC Letter Nos. 12-42, 2012 WL 12347457 (Dec. 6, 2012) and 13-12, 2013 WL 11069539 (May 1, 2013). MCML's failures to disclose PTMMMs to U.S. person CPs, as described above, did not fit within the parameters of any such no-action relief.<sup>3</sup> Therefore, the no-action relief letters do not exempt MCML's failures to provide PTMMMs to U.S. CPs.

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<sup>3</sup> CFTC Letter Nos. 12-42 and 13-12 state that, with respect to certain FX transactions, DSIO will not recommend that the Commission commence an enforcement action against an SD or MSP for failure to disclose to CPs to those transactions the PTMMM required under Regulation 23.431(a)(3) if, among other things, the CP "agrees in advance,

## **5. Failure to Supervise**

From February 2014 through September 2019 (the “Supervision Relevant Period”), MCML failed to supervise its swap dealer activities diligently with respect to swaps data reporting, conflict of interest disclosures, and PTMMM disclosures. By 2015, MCML identified in its compliance manual and training materials the pertinent Regulations governing its swaps data reporting obligations under Parts 43 and 45 of the Regulations, and its material disclosure requirements under Part 23 of the Regulations, including its obligations to disclose material conflicts of interest and PTMMMs where appropriate. MCML, however, did not implement those requirements or fulfill that obligation. Moreover, MCML lacked both protocols on how to implement the requirements and adequate surveillance systems to alert it to compliance deficiencies. These supervisory failures led directly to the violations of Parts 23, 43 and 45 of the Regulations set forth further above.

## **6. MCML’s Remediation and Cooperation Efforts**

In September 2019, MCML implemented remedial measures to correct the deficiencies in its swaps data reporting obligations under Parts 43 and 45 and its PTMMM disclosure obligations under Part 23. While those remedial measures were largely successful, some deficiencies remained, albeit to a significantly lesser extent than in earlier years. In 2020 and 2021, MCML experienced some problems integrating its internal client records system with its third-party system, resulting in, for example, a failure to identify certain clients as U.S. persons triggering the required SDR reporting. In addition, MCML experienced other system and/or manual input issues resulting in some misreporting of swaps data. MCML also failed to provide PTMMMs to U.S. CPs for a limited number of transactions. Upon discovery of these swap data reporting and PTMMM deficiencies, MCML implemented additional remedial measures, enhancing certain surveillance and control protocols.

As a further remedial measure, MCML has stated that it completed back-reporting to the relevant SDR for swaps that it reported in violation of Parts 43 and 45 of the Regulations, as described in the 2018 NFA audit examination. For metals swaps, MCML has stated that it completed back-reporting as of April 30, 2021, and for FX swaps, that it completed back-reporting as of July 23, 2021.

MCML cooperated extensively and timely with Division staff. This cooperation included analyses of swaps trading data that contained material admissions and voluntary witness testimony. Overall, the transparency and responsiveness of MCML and its counsel expedited the Division’s investigation considerably.

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in writing” that the SD and MSP “need not disclose a [PTMMM].” MCML has admitted that, prior to September 2019, MCML’s client relationship documents contained no provision enabling its CPs in the covered FX transactions to agree in advance to waive the PTMMM disclosure requirement. Nor did MCML otherwise obtain the written agreement of some of its U.S. CPs in the covered FX transactions that MCML need not provide PTMMMs.

### III. LEGAL DISCUSSION

#### A. **MCML Failed to Report, and Misreported, Swaps to an SDR**

All swaps, both cleared and uncleared, are required to be reported to a registered SDR, and the Act establishes requirements for real-time reporting and public availability of swap transaction data. *See* Sections 2(a)(13)(F) and (G) of the Act, 7 U.S.C. §§ 2(a)(13)(F) and (G). Pursuant to these requirements, the Commission adopted implementing swaps data reporting regulations, which apply to MCML in its capacity as a registered SD. *See, e.g.*, Parts 43 and 45 of the Regulations, 17 C.F.R pts. 43 and 45 (2021). These implementing regulations “were designed to enhance transparency, promote standardization, and reduce systemic risk.” *In re Mizuho Capital Markets LLC*, CFTC No. 21-17, 2021 WL 4501467, at \*9 (Sept. 27, 2021) (consent order). “Market participants rely upon the public availability of swap data for price discovery purposes.” *In re Morgan Stanley Capital Services LLC*, CFTC No. 20-78, 2020 WL 5876732, at \*4 (Sept. 30, 2020) (consent order) (citation omitted). “The accuracy and completeness of swap reporting are critical to the Commission’s mission to protect market participants and to ensure market integrity.” *CFTC 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)).

More specifically, during the SDR Relevant Period, MCML, for hundreds of thousands of swaps, failed to report to an SDR: real-time data as soon as technologically practicable, in violation of Regulations 43.3(a)(1) and (3), 17 C.F.R. §§ 43.3(a)(1) and (3) (2020) (amended 2021); any data for certain uncleared swaps, in violation of Regulation 43.4(a), 17 C.F.R. § 43.4(a) (2020) (amended 2021); primary economic terms and confirmation data, in violation of Regulations 45.3(b) and (c), 17 C.F.R. §§ 45.3(b) and (c) (2020) (amended 2021); continuation data, including life-cycle data, in violation of Regulation 45.4, 17 C.F.R. § 45.4 (2020) (amended 2021); unique swap identifiers, in violation of Regulation 45.5, 17 C.F.R. § 45.5 (2020) (amended 2021); legal entity identifiers, in violation of Regulation 45.6, 17 C.F.R. § 45.6 (2020) (amended 2021); and, errors and omissions, in violation of Regulation 45.14(a), 17 C.F.R. § 45.14(a) (2020) (amended 2021). *See, e.g.*, *In re Northern Trust*, CFTC No. 19-39, 2019 WL 4915486, at \*3 (Sept. 30, 2019) (hundreds of thousands of violations of, *inter alia*, Regulations 43.3, 45.3 and 45.4) (consent order); *In re Bank of New York Mellon*, CFTC No. 19-42, 2019 WL 4915489, at \*\* 2-3 (Sept. 30, 2019) (hundreds of thousands of violations of Regulations 43.3 and 45.3) (consent order); *In re Société Générale Intl., Ltd.*, CFTC No. 19-38, 2019 WL 4915485, at \*\* 5-6 (Sept. 30, 2019) (millions of violations, including violations of Regulations 43.3 and 45.3) (consent order).

#### B. **MCML Failed to Disclose a Conflict of Interest**

Sections 4s(h)(3)(B)(ii) and (C) of the Act, 7 U.S.C. §§ 6s(h)(3)(B)(ii) and (C), and Regulations 23.431(a)(3)(ii) and 23.433, 17 C.F.R. §§ 23.431(a)(3)(ii) and 23.433 (2021), set forth certain business conduct standards for SDs. These include requirements that SDs disclose to CPs information about the material characteristics of the swap, the SD’s material incentives,

conflicts of interest related to the swap, and that the SD communicate with CPs in a fair and balanced manner based upon principles of good faith and fair dealing.

From February 2014 through January 2018, MCML failed to disclose that persons employed to make proprietary trades on behalf of MCML's affiliate, MPT, had access to trades that MCML's customers and eventual CPs intended to execute. Therefore, MCML failed to disclose a conflict of interest related to its CPs' swaps and failed to communicate with its CPs in a fair and balanced manner based upon principles of good faith and fair dealing, in violation of Sections 4s(h)(3)(B)(ii) and (C) of the Act and Regulations 23.431(a)(3)(ii) and 23.433. *Cf. In the Matter of J.P. Morgan Chase Bank*, CFTC No. 16-05, 2015 WL 9268695, at \*4 (Dec. 18, 2015) (in non-swaps matter, Respondent failed to disclose a conflict of interest concerning an undisclosed preference to invest its clients' funds in proprietary commodity pools) (consent order).

#### **C. MCML Failed to Provide PTMMMs to its U.S. CPs**

Section 4s(h)(3)(B)(iii)(II) of the Act, 7 U.S.C. § 6s(h)(3)(B)(iii)(II), requires SDs to disclose to CPs information about the material characteristics of uncleared swaps and a daily mark of each uncleared swap transaction. Regulation 23.431(a)(3)(i), 17 C.F.R. § 23.431(a)(3)(i) (2021), additionally requires, as part of the disclosure of material incentives and conflicts of interest, disclosure of a PTMMM. Regulation 23.431 requires that both the daily mark and the PTMMM "shall not include amounts for profit, credit reserve, hedging, funding, liquidity, or any other costs or adjustments." Regulation 23.431(d)(2), 17 C.F.R. § 23.431(d)(2) (2021).

During the PTMMM Relevant Period, though to a lesser extent from September 2019 to April 2021, MCML failed to provide PTMMMs to some of its U.S. CPs prior to entering into hundreds of thousands of swaps for which no third-party trading platform provided the PTMMM and for which the no-action relief discussed above did not apply. Therefore, MCML violated Section 4s(h)(3)(B)(iii)(II) of the Act and Regulation 23.431(a)(3)(i). *See, e.g., In re Société Générale Intl., Ltd.*, CFTC No. 21-36, 2021 WL 4501471, at \*\*6-7 (Sept. 29, 2021) (Respondent failed to disclose PTMMMs, and provided misleading PTMMMs, to swaps CPs for eight years) (consent order); *In re Mizuho Capital Markets LLC*, CFTC No. 21-17, 2021 WL 4501467, at \*\*8-9 (Sept. 27, 2021) (Respondent had numerous failures to disclose daily marks, and the methodology and assumptions used to prepare daily marks, for six years) (consent order); *In re Cargill, Inc.*, CFTC No. 18-03, 2017 WL 5188245, at \*8 (Nov. 6, 2017) (Respondent provided misleading PTMMMs to swaps CPs for three years) (consent order).

#### **D. MCML Failed to Diligently Supervise its Swaps Trading Business**

Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B), requires "diligent supervision of the business of the registered swap dealer." Regulation 23.602(a) further requires that SDs "establish and maintain a system to supervise, and shall diligently supervise, all activities relating to its business performed by its partners, members, officer employees, and agents (or persons occupying a similar status or performing a similar function." 17 C.F.R. § 23.602(a) (2021). A violation of Regulation 23.602 is established "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 Société Générale Intl.*, CFTC No. 21-36, 2021 WL 4501471, at \* 8 (Sept. 29, 2021) (consent order).

The operative language of Regulation 23.602 is similar to the language of the Commission's longstanding supervision regulation for futures and options, Regulation 166.3, 17 C.F.R. § 166.3 (2021). *See In re INTL FC Stone Mkts., LLC*, CFTC No. 15-27, 2015 WL 4980321, at \*3 (Aug. 19, 2015) (consent order) (interpreting Regulation 23.602, noting similarity of language to Regulation 166.3, and making Regulation 166.3 case law instructive). Under Regulation 166.3, 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." *CFTC v. Deutsche Bank AG*, 2020 WL 4611985, at \*9 (consent order) (citing *In re INTL FC Stone Mkts.*, 2015 WL 4980321, at \*3 (quoting *In re Paragon Futures Ass'n*, CFTC No. 88-18, 1992 WL 74261, at \*14 (Apr. 1, 1992) (appeal of initial decision)).

During the Supervision Relevant Period, MCML failed to implement an adequate supervisory regime sufficient to ensure compliance and failed to perform its supervisory obligations with respect to swaps data reporting and material disclosure requirements. While MCML's swaps compliance manual and training materials identified the pertinent provisions of the Act and Regulations at issue here, MCML's managers failed to ensure that MCML's staff complied with the swaps data reporting requirements in Parts 43 and 45 of the Regulations. Instead, MCML failed to report or inaccurately reported hundreds of thousands of swaps to an SDR.

Similarly, MCML's managers failed to ensure that MCML staff disclose to U.S. CPs the conflict of interest created by its affiliate's proprietary traders' access to MCML's CPs' proposed trades. Finally, MCML's managers failed to ensure that MCML staff provided PTMMMs to U.S. CPs prior to entering into swaps trades. For these supervisory failures, MCML violated Section 4s(h)(1)(B) of the Act and Regulation 23.602.

#### **IV. FINDING OF VIOLATIONS**

Based upon the foregoing, the Commission finds that:

1. During the SDR Relevant Period, Respondent violated Sections 2(a)(13)(F) and (G) of the Act, 7 U.S.C. §§ 2(a)(13)(F) and (G), and Regulations 43.3(a)(1) and (3), 43.4(a), 45.3(b) and (c), 45.4, 45.5, 45.6, 45.14(a), 17 C.F.R. §§ 43.3(a)(1) and (3), 43.4(a), 45.3(b) and (c), 45.4, 45.5, 45.6, 45.14(a) (2020) (amended 2021);
2. From February 2014 through January 2018, Respondent violated Sections 4s(h)(3)(B)(ii) and (C) of the Act, 7 U.S.C. §§ 6s(h)(3)(B)(ii) and (C), and Regulations 23.431(a)(3)(ii) and 23.433, 17 C.F.R. §§ 23.431(a)(3)(ii) and 23.433 (2021);



3. During the PTMMM Relevant Period, Respondent violated Section 4s(h)(3)(B)(iii)(II) of the Act, 7 U.S.C. § 6s(h)(3)(B)(iii)(II), and Regulation 23.431(a)(3)(i), 17 C.F.R. § 23.431(a)(3)(i) (2021); and,
4. During the Supervision Relevant Period, Respondent violated Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B), and Regulation 23.602, 17 C.F.R. § 23.602 (2021).

## **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, and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2021), 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, §§ 201-53, 110 Stat. 847, 857-74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
  8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which 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), 4s(h)(1)(B) and 4s(h)(3)(B)(ii) and (iii)(II) and (C) of the Act, 7 U.S.C. §§ 2(a)(13)(F) and (G), 6s(h)(1)(B) and 6s(h)(3)(B)(ii) and (iii)(II) and (C), and Regulations 43.3(a)(1) and (3), 43.4(a), 45.3(b) and (c), 45.4, 45.5, 45.6, 45.14(a), 23.431(a)(3)(i) and (ii), 23.433 and 23.602, 17 C.F.R. §§ 23.431(a)(3)(i) and (ii), 23.433 and 23.602 (2021); 17 C.F.R. 43.3(a)(1) and (3), 43.4(a), 45.3(b) and (c), 45.4, 45.5, 45.6, 45.14(a) (2020) (amended 2021);
  2. Orders Respondent to cease and desist from violating Sections 2(a)(13)(F) and (G), 4s(h)(1)(B) and 4s(h)(3)(B)(ii) and (iii)(II) and (C) of the Act and Regulations 43.3(a)(1) and (3), 43.4(a), 45.3(b) and (c), 45.4, 45.5, 45.6, 45.14(a), 23.431(a)(3)(i) and (ii), 23.433 and 23.602;
  3. Orders Respondent to pay a civil monetary penalty in the amount of three million two hundred fifty thousand dollars (\$3,250,000) plus post-judgment interest within ten (10) 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 as set forth in Part VI of this Order.
- F. Represents that MCML’s back-reporting efforts with regard to swaps identified in connection with the 2018 NFA audit examination are complete as of April 30, 2021 for metals swaps and as of July 23, 2021 for FX swaps.

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), 4s(h)(1)(B) and 4s(h)(3)(B)(ii) and (iii)(II) and (C) of the Act, 7 U.S.C. §§ 2(a)(13)(F) and (G), 6s(h)(1)(B) and 6s(h)(3)(B)(ii) and (iii)(II) and (C), and Regulations 43.3(a)(1) and (3), 43.4(a), 45.3(b) and (c), 45.4, 45.5, 45.6, 45.14(a), 23.431(a)(3)(ii), 23.433 and 23.602, 17 C.F.R. §§ 43.3(a)(1) and (3), 43.4, 45.3(b) and (c), 45.4(a), 45.5, 45.6, 45.14(a), 23.431(a)(3)(i) and (ii), 23.433 and 23.602 (2021).
- B. Respondent shall pay a civil monetary penalty in the amount of three million two hundred fifty thousand dollars (\$3,250,000) (“CMP Obligation”) within ten (10) days of the date of entry of this Order. If the CMP Obligation is not paid in full within ten (10) 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.

Respondent shall pay the CMP Obligation 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:

CFTC  
C/O ESC/AMK-326; HQ RM 265  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
(405) 954-6569 office  
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact the email address [9-AMC-AR-CFTC@faa.gov](mailto:9-AMC-AR-CFTC@faa.gov) 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.

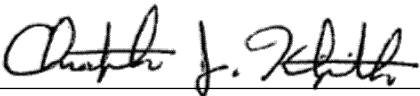
- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or 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 with the Commission: 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 investigations or actions related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, 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. 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's 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 as of this date.**

By the Commission.



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

Dated: March 15, 2022