

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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9:49 am, Sep 06, 2022

In the Matter of:

Blaise Brochard,

Respondent.

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) **CFTC Docket No. 22-24**
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**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from in or about January 2015 to at least April 2018 (“Relevant Period”), Blaise Brochard (“Respondent”) violated Section 6(c)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2021) 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 Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.¹

¹ 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 consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Respondent engaged in a scheme to mismark U.S. dollar (“USD”) interest rate derivatives positions at a global bank (“Bank”) in an attempt to inflate the profits and disguise the losses of the interest rate derivatives trading desk (“IRD Desk” or “Desk”) he managed. Respondent accomplished this scheme by submitting false or misleading entries in the Bank’s internal recordkeeping and accounting system relating to the marking of the Bank’s end-of-day USD LIBOR forward curve (“Closing Curve”). Specifically, Respondent engaged in a pattern of marking the Closing Curve in a manner that varied from observable mid-market prices that the book was supposed to reflect. Rather than marking the Closing Curve in accordance with mid-market prices, Respondent marked the book in a manner that aligned with the risk positions of the IRD Desk, while generally staying within the limits of internal controls designed to detect mismarking. Respondent submitted or caused to be submitted false or misleading Closing Curve marks virtually every day during the Relevant Period, overstating the profit & loss (“P&L”) calculations of the IRD Desk by approximately \$25 million at its peak.²

In accepting Respondent’s Offer, the Commission recognizes the substantial cooperation of Brochard with the Division of Enforcement’s investigation of this matter. The Commission’s recognition of Respondent’s substantial cooperation is further reflected in the form of a reduced penalty.

B. RESPONDENT

Respondent was a managing director on the IRD Desk at the Bank in the New York office. Respondent had been employed by the Bank since 1992. Respondent has never been registered with the Commission in any capacity.

C. FACTS

1. **Background**

During the Relevant Period, the IRD Desk acted as a market maker and built and distributed its own pricing for over-the-counter interest rate derivatives such as fixed-for-floating swaps, basis swaps, and forward rate agreements. The IRD Desk was also responsible for managing and hedging the risk associated with its trading book; for that purpose, the IRD Desk also traded other interest rates products, including interest rate futures and bonds. As the managing director and head trader of the IRD Desk, Respondent was responsible for managing all of the activities of the Desk.

² On June 19, 2018, the IRD Desk remarked its open swaps positions resulting in a one-day negative P&L impact of \$11.8 million. The year to date P&L impact of \$25 million referenced above included the \$11.8 million write down from June 19, 2018, as well as accumulated losses from earlier closing of positions as part of a de-risking exercise.

Respondent's responsibilities on the IRD Desk included marking the USD LIBOR forward curve. During the Relevant Period, LIBOR, an interest rate benchmark, frequently dictated the floating interest rate in a fixed-for-floating interest rate swap. A LIBOR forward curve is a graphical forecast of LIBOR rates at different points in the future and is typically derived from other market data like the prices of bonds, futures, and treasuries. LIBOR forward curves generated by Respondent typically forecasted interest rates for maturities between two years and fifty years, as well as certain monthly and daily intervals between zero and two years.

The Bank maintained two separate USD LIBOR forward curves, both of which were calculated by the IRD Desk. First, the IRD Desk calculated a "live" curve ("Live Curve"), which was automatically updated throughout the day based on live observable data (e.g., prices in bonds, futures, and treasuries) derived from public sources like Bloomberg, Reuters, and exchanges. Second, at the end of each day, the IRD Desk calculated the Closing Curve. The Closing Curve incorporated the same basic inputs as the Live Curve, except that it was based on end-of-day settlement prices rather than intraday prices. The Bank's policies required that both the Live Curve and Closing Curve be based on observable mid-market prices. As the head of the IRD Desk, Respondent was responsible for calculating an accurate Closing Curve at the end of each day based on observable mid-market prices. Both the Live Curve and Closing Curve were displayed in an internal Bank system and viewable to other traders on other desks at the Bank. The Bank used the Closing Curve, not the Live Curve, to calculate the profit and loss of Respondent's trading book.

At the end of each month, Respondent sent the Closing Curve he calculated to another division at the Bank responsible for internal controls relating to valuation and ensuring the accuracy of the Bank's P&L, including all inputs used to calculate P&L. This division then generated its own closing curve ("Control Curve") based on observable mid-market data, without adjustments, and compared each point on the Control Curve to the Closing Curve submitted by Respondent. If any point on the Closing Curve diverged from the Control Curve by more than one basis point ("bp"), then the Bank adjusted the Closing Curve to be within 1bp of the Control Curve for the purpose of calculating the IRD Desk's monthly P&L. This policy was referred to internally at the Bank as the "1bp tolerance." During the Relevant Period, numerous individuals at the Bank recognized that a 1bp tolerance on either side of the bid/ask was too wide a spread to reflect general market liquidity of the products traded by the desk.

2. Respondent's Misconduct

During the Relevant Period, Respondent mismarked and caused to be mismarked the end-of-day and end-of-month Closing Curves. Specifically, when marking the Closing Curve, Respondent diverted from observable mid-market prices that the positions were supposed to reflect. Rather, Respondent marked the Closing Curve in a manner that was inconsistent with fair value and the Bank's policies by taking into account the risk positions of the IRD Desk. One common measure of risk used by the Bank was "DV01," which refers to the dollar value of one basis point. DV01 is a measure of interest rate sensitivity and represents the change in value that would occur in response to a 1bp change in interest rates. The Bank calculated the DV01 of the IRD Desk's trading book for each point along the LIBOR forward curve. As the head of the IRD Desk, Respondent knew the DV01 in his trading book associated with each maturity along the LIBOR forward curve. Using his knowledge of DV01, Respondent engaged in a pattern of

submitting false and misleading marks relating to several points along the Closing Curve to create the appearance of profit and hide the substantial losses the book was actually generating. For example, for certain maturities with a large positive DV01 Respondent increased the value of his Closing Curve marks; conversely, for other maturities with a large negative DV01, Respondent decreased the value of his Closing Curve marks. By taking into account the IRD Desk's risk positions and P&L when generating the Closing Curve, Respondent caused the Closing Curve to vary significantly from observable mid-market prices.

Respondent concealed his mismarking scheme in several ways during the Relevant Period. Respondent was aware of the 1bp tolerance, and as a result, he marked his book in a pattern to keep his Closing Curve marks within 1bp of directly observable mid-market rates. By generally keeping his Closing Curve marks within the 1bp tolerance set by the Bank, Respondent avoided raising red flags that would have alerted others at the Bank of his misconduct, including within the division responsible for monitoring the 1 bp tolerance.

To generate his Closing Curves, Respondent relied on a series of complex spreadsheets of his own design. Respondent, moreover, took steps to ensure that no one else at the Bank understood how his Closing Curve spreadsheets worked. Assisting Respondent on the Desk were Junior Trader 1 and Junior Trader 2. Respondent typically calculated the Closing Curve himself, without input or assistance from anyone else on the Desk. On occasions when Respondent was out of the office, junior members of the IRD Desk, including Junior Trader 1, would generate the Closing Curve using Respondent's spreadsheets. Respondent, however, never explained to Junior Trader 1 how the various parts of the spreadsheets precisely worked. Instead, Respondent left a series of specific instructions that allowed Junior Trader 1 to use the spreadsheets to generate the Closing Curve marks in a manner that incorporated existing mismarks without understanding the specific calculations behind those marks.

3. Discovery of the Issue and Impact

In March 2018, a supervisor noticed that the shape of the Closing Curve appeared to diverge significantly from the shape of the Live Curve and began to ask questions about Respondent's process for generating the Closing Curve. Respondent told his supervisors that the deviation between the Closing Curve and the Control Curve historically had oscillated around zero—at times showing positive deviation and at other times showing negative deviation, while eventually returning to zero. Similarly, Respondent told his supervisors that the positive P&L generated by the difference between his Closing Curves and the Control Curves originated "recently" and within the "past quarter." However, Respondent had been mismarking the Closing Curve to create the false appearance of additional profits and hide unrealized losses since at least 2015. At no point did Respondent disclose to his supervisors that he was taking the IRD Desk's risk positions into account when calculating the Closing Curve. Soon after the Bank discovered the discrepancy in the Closing Curve marks, it removed Respondent from the trading desk, and he immediately resigned.

At its peak in early 2018, Respondent's mismarking of the Closing Curve overstated the P&L of the IRD Desk by approximately \$25 million. In addition, Respondent's mismarking of the Closing Curve caused the Bank to provide inaccurate valuation data to a swaps data

repository and inaccurate daily marks and margin calculations to certain swap counterparties on numerous occasions during the Relevant Period.

III. LEGAL DISCUSSION

Under Section 6(c)(1) of the Act, it is unlawful for any person, directly or indirectly, to use or employ any manipulative or deceptive device or contrivance in connection with, as relevant here, any swap. 7 U.S.C. § 9(1). Similarly, Regulation 180.1(a)(1)-(3), in relevant part, makes it unlawful for any person, directly or indirectly, in connection with any swap, to intentionally or recklessly: (1) use or employ or attempt to use or employ any manipulative device, scheme, or artifice to defraud; (2) make or attempt to make any untrue or misleading statement or omission of material fact; or (3) engage or attempt to engage in any act or practice, which operates or would operate as a fraud or deceit on any person. 17 C.F.R. § 180.1(a)(1)-(3) (2021).

Mismarking internal books to inflate profits or conceal losses constitutes fraudulent conduct under the Act and Regulations. *See, e.g., In re Rege*, CFTC No. 19-14, 2019 WL 4267850, at *5 (July 18, 2019) (consent order) (finding violations of Section 6(c)(1) and Regulation 180.1(a) where respondent internally mismarked the valuation of interest rate swaps to inflate P&L); *In re Bourne*, CFTC No. 18-51, 2018 WL 4862368, at *2-3 (Sept. 28, 2018) (consent order) (finding violations of Section 6(c)(1) and Regulation 180.1(a) where respondent internally mismarked the valuation of swap instruments to disguise significant trading losses); *CFTC v. Brooks*, No. 13-C-6879(KMW), 2014 WL 4443446, at *4-5 (S.D.N.Y. Aug. 1, 2014) (consent order) (finding violations of Sections 4b and 6(c)(1) of the Act and Regulation 180.1(a) where defendant mismarked internal books and records to inflate the profitability of futures positions).

As set forth above, Respondent violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), because he directly employed a manipulative and deceptive device and contrivance in connection with certain swaps that he traded on behalf of the Bank. For the same reasons, Respondent also violated Regulation 180.1(a)(1)-(3) because he intentionally or recklessly: (1) used or employed a manipulative device, scheme, or artifice to defraud; (2) made untrue or misleading statements of material fact or omitted to state material facts necessary in order to make the statements made not untrue or misleading; and (3) engaged in acts, practices, or courses of business which operated as a fraud or deceit on the Bank. By this conduct, Respondent violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1)-(3).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2021).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which he, 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 he 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 he 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 Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2021);
 - 2. Orders Respondent to cease and desist from violating Section 6(c)(1) of the Act and Regulation 180.1(a)(1)-(3);

3. Orders Respondent to pay a civil monetary penalty in the amount of two hundred and fifty thousand dollars (\$250,000) (“CMP Obligation”), plus post-judgment interest within ten days of the date of entry of this Order;
4. Orders that Respondent be prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40)), until after full payment and satisfaction of the CMP Obligation and any applicable interest, and all registered entities shall refuse him trading privileges during that period; and
5. Orders Respondent to comply with the conditions and undertakings 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 Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2018), and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2021).
- B. Respondent shall pay a civil monetary penalty in the amount of two hundred and fifty thousand dollars (\$250,000) (“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 (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, 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
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Tonia King 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, and to the Deputy Director, Enforcement, Eastern Regional Office, Commodity Futures Trading Commission, 290 Broadway, New York, New York 10007.

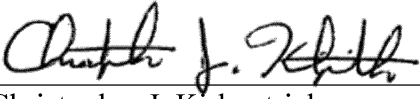
Respondent is prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40)), until after full payment and satisfaction of the CMP Obligation and any applicable interest, and all registered entities shall refuse him trading privileges during that period.

- C. Respondent shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither he nor any agents or employees under his 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 shall comply with this agreement, and shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement.
 2. Respondent agrees that he shall not, for a period of: (a) three years after the date of entry of this Order; and (b) until after full payment and satisfaction of the CMP Obligation and any applicable interest, directly or indirectly:
 - a. control or direct the trading of any "commodity interest" (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2021)) for or on behalf of any other person or entity, whether by power of attorney or otherwise;
 - b. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests;
 - c. apply for registration or claim exemption from registration with the Commission in any capacity, or engage in any activity requiring such registration or exemption from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2021); and/or
 - d. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2021)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38)) registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9).

3. 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.
4. 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 his 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 Respondent satisfies in full his CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to his 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.



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

Dated: September 6, 2022