

II. FINDINGS

The Commission finds the following:

A. Summary

During the Relevant Period, tpSEF violated Sections 5h(f)(1)(A) and 5h(f)(2)(A) and (B) of the Act, 7 U.S.C. §§ 7b-3(f)(1)(A), 7b-3(f)(2)(A), (B), and Regulations 37.9(b)(1), 37.200(a) and (b), and 37.201(b), 17 C.F.R. §§ 37.9(b)(1), 37.200(a), (b), 37.201(b) (2021), by failing to prevent Participants² on tpSEF from executing 301 pre-arranged or pre-negotiated swap transactions through the SEF's Order Book that did not comply with the 15-second delay required under Regulation 37.9(b)(1) and tpSEF's own Rule 4011, and by failing to enforce compliance with its Rule 4011 in connection with these transactions.

In accepting Respondent's Offer, the Commission recognizes the cooperation of Respondent with the Division of Enforcement's investigation of this matter.

B. Respondent

tpSEF Inc. is a registered Swap Execution Facility ("SEF") located in Jersey City, New Jersey. It was granted temporary registration in September 2013, became operational in October 2013, and was granted full registration in January 2016.

C. Facts

tpSEF provides execution services in a full range of asset classes, including interest rate swaps and credit default swaps. The majority of swaps executed on tpSEF involve transactions in which a Participant acts as a broker of two customers' orders against each other.

Trading on tpSEF is governed by tpSEF's Rulebook. As a self-regulatory organization, tpSEF has oversight obligations for conduct on the SEF and is required to enforce its rules.

Regulation 37.9, 17 C.F.R. § 37.9 (2021), governs methods of execution of any transaction involving a swap that is subject to the trade execution requirement in Section 2(h)(8) of the Act, 7 U.S.C. § 2(h)(8). These transactions are known as "Required Transactions." Regulation 37.9(b)(1) requires a time delay for certain Required Transactions as follows:

A swap execution facility shall require that a broker or dealer who seeks to either execute against its customer's order or execute two of its customers' orders against each other through the swap execution facility's Order Book, following some form of pre-arrangement or pre-negotiation of such orders, be subject to at least a 15 second time delay between the entry of those two orders into the Order Book, such that one side of the potential transaction is disclosed and made

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.

² tpSEF's Rulebook defines a Participant as any person who has been admitted by, and has trading privileges on, tpSEF.

available to other market participants before the second side of the potential transaction, whether for the broker's or dealer's own account or for a second customer, is submitted for execution.

tpSEF's Rulebook mirrors this requirement in its Rule 4011:

(a) With respect to Required Cross Transactions³, the following conditions must be satisfied:

(1) in the case of an execution by a Participant as principal/dealer against a customer Order, the customer Order shall be entered into the Order Book as a firm quote and exposed to the market for at least 15 seconds before the Participant's Order may be entered, and

(2) in the case of an execution by a Participant acting as broker of two customers' Orders against each other, one side of the potential Transaction (the "Displayed Order") shall be entered into the Order Book as a firm quote and exposed to the market for at least 15 seconds before the second side of the potential Transaction (the "Waiting Order") may be entered.

During the Relevant Period, as a result of a coding error that occurred when tpSEF upgraded the software that operates its Order Book, tpSEF failed to prevent Participants from executing 301 transactions through tpSEF's Order Book that did not comply with the 15-second delay required under Regulation 37.9(b)(1) and tpSEF Rule 4011. All 301 of these transactions involved instances in which a Participant was acting as a broker of two customers' orders against each other. tpSEF did not take adequate steps to timely detect and remedy the coding error, and thereby, did not adequately enforce compliance with its Rule 4011 in connection with these transactions.

Of these 301 transactions, seven involved credit default swaps and two hundred and ninety-four (294) involved interest rate swaps. These transactions fall into the following categories:

- Two hundred sixty-two (262) transactions involved instances in which: (1) multiple separate Displayed Orders, which were packaged as one transaction, were entered onto the SEF's Order Book seconds apart; (2) a Waiting Order was entered that executed against the combined total of the Displayed Orders previously entered; and (3) although the Waiting Order executed against the first Displayed Order more than 15 seconds after it was entered, it executed against the subsequent Displayed Order(s) in less than 15 seconds after it was entered. All of these transactions involved interest rate swaps.
- Twenty-seven (27) transactions involved instances in which: (1) a Displayed Order was entered onto the SEF's Order Book; (2) the Displayed Order's

³ tpSEF's Rulebook defines a Required Cross Transaction as "a Required Transaction (other than a Block Trade or Package Transaction (Order Book Exempt)) (x) in which a Participant acting as a broker or dealer seeks to either execute against its customer's Order or execute two of its customers' Orders against each other, and (y) that is submitted for execution on the Order Book, either directly or via an Execution Specialist, following some form of permitted pre-arrangement or pre-negotiation."

amount was subsequently modified; and (3) the modified Displayed Order was then executed against within less than 15 seconds of the modification being entered. All of these transactions involved interest rate swaps.

- Twelve (12) transactions in which a Displayed Order was executed against in less than 15 seconds after it was entered onto the SEF's Order Book. Of these transactions, 5 involved interest rate swaps and 7 involved credit default swaps.

III. LEGAL DISCUSSION

A. tpSEF Violated Regulation 37.9(b)(1)

Regulation 37.9(b)(1), 17 C.F.R. § 37.9(b)(1) (2021), imposes a 15-second time delay on certain Required Transactions executed through a SEF's Order Book. As the Commission noted at the time of the promulgation of the regulation:

[T]he purpose of the time delay requirement is to ensure a minimum level of pre-trade price transparency for Required Transactions on a SEF's Order Book by allowing other market participants the opportunity to join or participate in a trade where a broker or dealer engages in some form of pre-arrangement or pre-negotiation of a transaction and then attempts, through the SEF's Order Book, to either internalize the order by executing opposite a customer or cross two customer orders.

Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33475 at 33503 (June 4, 2013).

By its terms, Regulation 37.9(b)(1) imposes the responsibility for ensuring this time delay on the SEF itself, stating that the SEF shall require that the execution of a Required Transaction on the SEF's Order Book shall be subject to at least a 15-second delay between the entry of each side of the transaction. By allowing Participants to execute 301 transactions which did not comply with the 15-second delay, tpSEF violated Regulation 37.9(b)(1).

B. tpSEF Violated Sections 5h(f)(1)(A) and 5h(f)(2)(A) and (B) of the Act and Regulations 37.200(a) and (b), and 37.201(b)

Section 5h(f)(1)(A) of the Act, 7 U.S.C. §§ 7b-3(f)(1)(A), provides that a SEF shall comply with any requirement that the Commission may impose by rule or regulation. By its failure to comply with Regulation 37.9(b)(1), as set forth above, tpSEF violated Section 5h(f)(1)(A) of the Act.

Section 5h(f)(2)(A) of the Act, 7 U.S.C. §§ 7b-3(f)(2)(A), states that a SEF shall establish *and enforce compliance with* any rule of the SEF, including the terms and conditions of the swaps traded or processed on or through the SEF (emphasis added). Section 5h(f)(2)(B) of the Act, 7 U.S.C. §§ 7b-3(f)(2)(B), states that a SEF shall establish *and enforce* trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, *and enforce* those rules, including means to provide market participants with

impartial access to the market, and to capture information that may be used in establishing whether rule violations have occurred (emphasis added). The language of these statutory provisions is mirrored in Regulation 37.200(a) and (b), 17 C.F.R. § 37.200(a) and (b) (2021). Regulation 37.201(b), 17 C.F.R. § 37.201(b) (2021), further states that a SEF shall establish *and impartially enforce compliance with* the rules of the SEF, including, but not limited to the terms and conditions of any swaps traded or processed on or through the SEF (emphasis added). By failing to enforce Rule 4011 with respect to the 301 transactions described in this Order, tpSEF violated Sections 5h(f)(1)(A) and 5h(f)(2)(A) and (B) of the Act and Regulations 37.200(a) and (b), and 37.201(b).

IV. FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, tpSEF violated Sections 5h(f)(1)(A) and 5h(f)(2)(A) and (B) of the Act, 7 U.S.C. §§ 7b-3(f)(1)(A), 7b-3(f)(2)(A), (B), and Regulations 37.9(b)(1), 37.200(a) and (b), and 37.201(b), 17 C.F.R. §§ 37.9(b)(1), 37.200(a), (b), 37.201(b) (2021).

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 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 Commission's Regulations, 17 C.F.R. §§ 148.1-30, 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, §§ 201-253, 110 Stat.

847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205, 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.
- 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 tpSEF violated Sections 5h(f)(1)(A) and 5h(f)(2)(A) and (B) of the Act, 7 U.S.C. §§ 7b-3(f)(1)(A), 7b-3(f)(2)(A), (B), and Regulations 37.9(b)(1), 37.200(a) and (b), and 37.201(b), 17 C.F.R. §§ 37.9(b)(1), 37.200(a), (b), 37.201(b) (2021);
 2. Orders Respondent to cease and desist from violating Sections 5h(f)(1)(A) and 5h(f)(2)(A) and (B) of the Act, and Regulations 37.9(b)(1), 37.200(a) and (b), and 37.201(b);
 3. Orders Respondent to pay a civil monetary penalty (“CMP”) in the amount of eight hundred fifty thousand dollars (\$850,000), plus any post-judgment interest, within ten days of the date of the entry of the Order;
 4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in Section 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 5h(f)(1)(A) and 5h(f)(2)(A) and (B) of the Act, 7 U.S.C. §§ 7b-3(f)(1)(A), 7b-3(f)(2)(A), (B), and Regulations 37.9(b)(1), 37.200(a) and (b), and 37.201(b), 17 C.F.R. §§ 37.9(b)(1), 37.200(a), (b), 37.201(b) (2021).
- B.** Respondent shall pay a CMP in the amount of eight hundred fifty thousand dollars (\$850,000) (“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 unpaid portion of 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 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 226
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 party 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. tpSEF shall undertake to review all Required Transactions executed on the SEF for the period August 2020 to the date of this Order to determine whether those transactions warrant further investigation for possible violations of tpSEF Rule 4011, and shall report to the Commission's Division of Enforcement within 180 days of the date of this Order its findings and any actions undertaken pursuant thereto.
 2. tpSEF shall undertake to review its policies and procedures designed to deter and detect violations of, and enforce compliance with, tpSEF Rule 4011, and shall report to the Commission within 180 days of the date of this Order the results of such review and any changes to its policies and procedures implemented as a result thereof.
 3. 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 the agents and/or

employees under its authority or control understand and comply with this agreement.

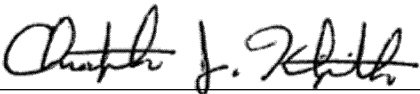
4. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
5. 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
Office of the General Counsel
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington, DC 20581

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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 29, 2022