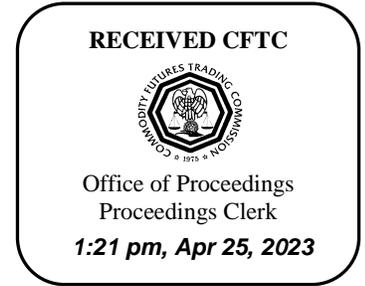


UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION



_____)
In the Matter of:)
)
Mizuho Capital Markets LLC,)
) **CFTC Docket No. 23-24**
Respondent.)
_____)

**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 June 2018 to at least December 2020 (“Relevant Period”), Mizuho Capital Markets LLC (“MCM” or “Respondent”) violated three subsections of Section 4s(h) of the Commodity Exchange Act (“Act”), 7 U.S.C § 6s(h), and Regulations 23.431(a)(3)(ii), 23.433, and 23.602(a), 17 C.F.R. §§ 23.431(a)(3)(ii), 23.433, 23.602(a) (2022), 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

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period of June 2018 through December 2020, MCM failed to adequately disclose that it was engaging in certain trading practices relating to certain foreign

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.

exchange forward transactions with clients. Specifically, MCM failed to adequately disclose that it was trading in the minutes or seconds before MCM provided the spot exchange rate to, and executed the forward transaction with, the client (the “Subject Trading”). This trading by MCM likely contributed to moving the spot exchange rate in the relevant currency pair against the client. As a result of any such move, the client at times likely obtained the currency it sought to acquire via the foreign exchange forward at a rate less favorable than may otherwise have been available, and MCM may have been able to hedge its exposure vis-à-vis its clients at a rate more favorable than may otherwise have been available. MCM did not adequately disclose to its clients that it traded at times in this manner.

As a provisionally registered swap dealer, MCM is subject to the Swap Dealer Business Conduct Standards (“Standards”) set forth in Section 4s(h) of the Act, 7 U.S.C. § 6s(h), and in Part 23, Subpart H of the Regulations, 17 C.F.R., Part 23, Subpart H (2022). By engaging in trading that might disadvantage clients without adequate disclosure to them, MCM violated the Standards requiring swap dealers to:

- (A) disclose material information in a manner reasonably designed to allow a counterparty to assess the material incentives and conflicts of interest that the swap dealer may have in connection with a particular swap, pursuant to Section 4s(h)(3)(B)(ii) of the Act, 7 U.S.C. § 6s(h)(3)(B)(ii), and Regulation 23.431(a)(3)(ii), 17 C.F.R. §§ 23.431(a)(3)(ii) (2022);
- (B) communicate with any counterparty in a fair and balanced manner based on principles of fair dealing and good faith, pursuant to Section 4s(h)(3)(C) of the Act, 7 U.S.C. § 6s(h)(3)(C), and Regulation 23.433, 17 C.F.R. § 23.433 (2022); and
- (C) diligently supervise its business as a swap dealer, pursuant to Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B) and Regulation 23.602(a), 17 C.F.R. § 23.602(a) (2022).

The Commission acknowledges Respondent’s representations that it has engaged in certain remedial measures designed to increase compliance with the Standards.

B. RESPONDENT

Mizuho Capital Markets LLC is a Delaware limited liability company with its principal place of business in New York City. MCM has been provisionally registered as a swap dealer since December 2012.

C. FACTS

1. DCFX Forwards

During the Relevant Period, MCM failed to adequately disclose that it was engaging in the Subject Trading concerning certain foreign exchange forward transactions. These foreign exchange forward transactions were of a type referred to as “deal-contingent FX forwards,” or “DCFX forwards.” A DCFX forward allows a client to hedge currency risk arising from an anticipated cross-border transaction, usually a purchase or sale of a portfolio company, in which the client would either receive or pay a large sum of foreign currency at the close of the underlying transaction. By entering the DCFX forward, the client could lock in the foreign currency price it would pay or receive if the deal closed. However, DCFX forwards are cancellable by the client in the event that the cross-border transaction fails to close.

In order to execute a DCFX forward, MCM and the client must agree on a spot exchange rate that will be applied to the entire notional amount of the transaction. The spot exchange rate is

the exchange rate prevailing at any particular point in time for the relevant currency pair in the spot market—i.e., the market for actual delivery of a particular currency within two days.

MCM and the client typically agree to the spot rate on a phone call, referred to as the “execution call.” The execution call is initiated by the client. MCM does not know exactly when the execution call will take place. When the call comes, the client typically starts by confirming the economic terms of the DCFX forward. These terms have been agreed upon in advance, and generally include: the notional currency amount; the range of possible delivery dates; the interest rate differential applicable to the relevant currency pair (i.e., the forward points); and MCM’s fees or charges, which include charges for assuming the client’s currency risk (referred to as “spot slippage”) and for the client’s right to cancel the DCFX forward if the underlying transaction fails to close (a discounted option premium referred to as the “DC premium”). MCM is represented on the execution call by an MCM salesperson.

2. MCM’s Trading

During the Relevant Period, MCM did not adequately disclose that it engaged in the Subject Trading in connection with thirteen specific DCFX forwards (the “Subject Transactions”). On each of these occasions, an MCM salesperson advised an MCM trader, via chat or intercom, that the client was calling to execute the DCFX forward. The trader then immediately started hedging MCM’s anticipated exposure vis-à-vis the client. In so doing, the MCM trader often traded through multiple price levels in the minutes or seconds before MCM provided the spot exchange rate to the client.

MCM did not adequately disclose that by trading in this way, MCM engaged in activity that likely at times contributed to moving the spot exchange rate in the relevant currency pair against the client. As a result of such a move, the client may have entered into the DCFX forward at a rate less favorable than may otherwise have been available. MCM, by contrast, may have been able to hedge its exposure vis-à-vis the client at a rate more favorable than may otherwise have been available.

3. MCM’s Disclosures

MCM did not inform clients that it was engaged in trading in the minutes or seconds before providing the spot rate for, and executing, the Subject Transactions. MCM provided clients with emails containing links to various disclosures on MCM’s website that stated, in relevant part and in general, that MCM may seek to “pre-hedge” transactions—i.e., hedge MCM’s anticipated exposure vis-à-vis the client in advance, and that such pre-hedging may affect the price of the underlying asset.

In late April 2019, MCM added language to the disclosures assuring clients that MCM “will always endeavor to avoid unreasonable impact on the market.” The additional disclosures assured clients that MCM will “appropriately manage any possible conflicts of interest that are anticipated from the information it acquires through relevant transactions.”

4. MCM’s Policies

During the Relevant Period, MCM had policies requiring that pre-hedging of client orders be “undertaken fairly and with transparency in a manner that is not meant to disadvantage the Client or disrupt the market.” Starting in October 2020, MCM added a policy requiring the “trading supervisor” to review the trade blotter for “[p]re-hedging in a manner that disadvantaged the client, disrupted the market or was otherwise not commensurate with the size and nature of the transaction it was designed to hedge”

Subsequent to the Relevant Period, MCM conducted an audit of its foreign exchange trading policies and procedures. The resulting report related to supervisory procedures concluded: “FX Trading does not identify and review potential pre-hedging transactions to verify that pre-hedging was communicated to clients, commensurate with the anticipated risk and not done in a manner to disadvantage the client.” Accordingly, the audit group concluded that because there was no system in place at the time to identify pre-hedging trades for evaluation, “Pre-hedging may not be performed fairly or transparently, resulting in adverse outcomes for clients or unmitigated conflicts of interest.”

III. LEGAL DISCUSSION

Section 4s(h)(B)(1) of the Act, 7 U.S.C. § 6s(h)(B)(1), requires that each registered swap dealer conform with the business conduct standards set forth therein, as well as with such standards prescribed by the Commission by regulation. The Commission prescribed such standards in Subpart H of Part 23 of the Regulations, 17 C.F.R., Part 23, Subpart H (2022).

Section 1a(47)(E)(iv) of the Act, 7 U.S.C. § 1a(47)(E)(iv), specifies that any swap dealer who is party to a foreign exchange forward shall conform to the Standards. The Standards are aimed at reversing what was hitherto a *caveat emptor* trading environment and providing transparency in dealings between swap dealers and counterparties. *See* Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties, 77 Fed. Reg. 9734, 9805 (Feb. 17, 2012). By failing to adequately disclose that it was engaging in the Subject Trading, MCM violated the following Swap Dealer Business Conduct Standards.

A. **MCM failed to disclose material information sufficient to allow a client to assess conflicts of interest arising from MCM’s Subject Trading, in violation of Section 4s(h)(3)(B)(ii) of the Act and Regulation 23.431(a)(3)(ii)**

Section 4s(h)(3)(B)(ii) of the Act, 7 U.S.C. § 6s(h)(3)(B)(ii), and Regulation 23.431(a)(3)(ii), 17 C.F.R. § 23.431(a)(3)(ii) (2022), require that a swap dealer, at a reasonably sufficient time before entering into a swap, disclose to its counterparty material information concerning the swap in a manner reasonably designed to allow the counterparty to assess any material incentive or conflict of interest that the swap dealer may have in connection with the swap, including any compensation or other incentive from any source other than the counterparty. Such compensation or incentive may arise from the swap dealer’s principal trading activities in the spot commodity underlying the swap. *See* 77 Fed. Reg. at 9767.

As set forth above, without adequate disclosure, MCM engaged in certain trading in the minutes or seconds before providing the spot exchange rate to the client. By so doing, MCM engaged in conduct which, at times, likely contributed to moving the rate against the client. MCM had an incentive to trade in this manner because it allowed MCM to hedge its exposure at a rate more favorable than may otherwise have been available immediately after execution of the transactions. This incentive gave rise to a conflict of interest because MCM’s Subject Trading at times likely contributed to moving the spot exchange rate against the client. MCM’s Subject Trading was something a client would want to know about before agreeing to enter into a DCFX forward with MCM, and is therefore material.

MCM did not adequately disclose its Subject Trading to clients to allow a client to assess MCM’s conflict of interest arising from this trading practice. The disclosures assured clients that MCM will “always endeavor to avoid unreasonable impact on the market,” and “appropriately manage any possible conflicts of interest.” These assurances undermined the cautionary value of the disclosures and wrongly suggest that MCM would not pre-hedge in a manner that could result in movement of the spot exchange rate against a client. MCM thus violated Section 4s(h)(3)(B)(ii) of the Act and Regulation 23.431(a)(3)(ii). *See In re ED&F Man Capital Mkts., Ltd.*, CFTC No.

22-13, 2022 WL 827785, at *6 (Mar. 15, 2022) (consent order) (finding that swap dealer violated Section 4s(h)(3)(B)(ii) and Regulation 23.431(a)(3)(ii) where respondent failed to disclose that traders had access to clients' confidential swaps positions).

B. MCM failed to communicate in a fair and balanced manner, based on principles of fair dealing and good faith, with counterparties regarding MCM's Subject Trading, in violation of Section 4s(h)(3)(C) of the Act and Regulation 23.433.

Section 4s(h)(3)(C) of the Act, 7 U.S.C. § 6s(h)(3)(C), and Regulation 23.433, 17 C.F.R. § 23.433 (2022), require that a swap dealer communicate with a counterparty in a fair and balanced manner based on principles of fair dealing and good faith. The "fair dealing rule" requires swap dealers to follow policies and procedures reasonably designed to ensure that its disclosures are fair and complete, and allow the counterparty to protect itself and make an informed decision. *See* 77 Fed. Reg. at 9790. The fair dealing rule is principles-based, and applies flexibly based on the facts and circumstances of a particular transaction. *Id.* at 9769.

As set forth above, MCM failed to adequately disclose its Subject Trading to clients. MCM thus failed to communicate with its clients in a fair and balanced manner based on principles of good faith and fair dealing, in violation of Section 4s(h)(3)(C) of the Act and Regulation 23.433. *See In re Wells Fargo Bank, N.A.*, CFTC No. 20-08, 2019 WL 6003221, at *3-6 (Nov. 8, 2019) (consent order) (finding swap dealer violated fair dealing rule by failing to calculate agreed-upon weighted average price and instead picking a rate swap dealer thought counterparty would accept); *ED&F*, 2022 WL 827785, at *6 (finding swap dealer violated fair dealing rule by failing to disclose that traders had access to clients' confidential swaps positions).

C. MCM failed to diligently supervise its business as a swap dealer in violation of Section 4s(h)(1)(B) of the Act and Regulation 23.602(a).

Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B), requires that a swap dealer diligently supervise its business as such. Regulation 23.602(a), 17 C.F.R. § 23.602(a), requires that each swap dealer diligently supervise all activities relating to its business performed by its partners, members, officers, employees, and agents. No underlying violation of the Act or Regulations is required to establish a swap dealer's failure to supervise. *See In re Bank of America, N.A.*, CFTC No. 22-38, 2022 WL 4733591, at *8 (Sept. 27, 2022) (consent order) (finding that swap dealer's failure to prevent proprietary traders' use of unapproved communication methods constituted supervision failure). That said, underlying violations that should have been detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly, is suggestive of a failure to supervise. *See id.* The failure of a swap dealer to ensure that its employees or agents comply with the swap dealer's written policies or procedures may also constitute a supervision violation. *See In re Natixis*, CFTC No. 22-23, 2022 WL 4118641, at *6 (Sept. 6, 2022) (consent order) (finding that swap dealer violated supervision obligation where employees failed to value interest rate derivatives consistent with swap dealer's written policies and procedures).

As set forth above, MCM's failure to adequately disclose its Subject Trading constitutes a violation of MCM's supervision obligations. MCM personnel were aware of the trading practice in regards to the thirteen transactions. MCM nonetheless failed to adequately disclose the facts of its trading practices to clients. This constitutes a failure by MCM to diligently supervise its business as a swap dealer. *See ED&F*, 2022 WL 827785, at *2 (finding supervision violation where swap dealer failed to disclose that its traders had access to clients' confidential swaps positions).

MCM's failure to abide by its own written policies and procedures likewise constitutes a violation. As set forth above, MCM had policies requiring that "pre-hedging" be done "fairly and with transparency in a manner that is not meant to disadvantage the Client or disrupt the market."

Due to its inadequate disclosures, MCM failed to ensure that its pre-hedging was done “fairly and with transparency.” MCM had a policy requiring the “trading supervisor” to review the trade blotter for “[p]re-hedging in a manner that disadvantaged the client ... and could constitute ‘trading ahead’ or ‘front-running’....” An internal audit team at MCM found that there was no record of the trading supervisor doing this. MCM thus failed to diligently supervise its business as a swap dealer. *See Wells Fargo*, 2019 WL 6003221, at *4-6 (finding supervisory violation where swap dealer failed to follow policies requiring compliance with Swap Dealer Business Conduct Standards).

D. MCM represents that it has undertaken remedial measures.

MCM represents that it has undertaken remedial measures to bring itself into greater compliance with the Standards, and to improve its disclosures and controls around pre-hedging in connection with DCFX forwards.

MCM represents that in February 2022 it implemented new policies and procedures requiring MCM foreign currency traders to specifically designate trades as “pre-hedging” if intended by the trader to offset anticipated exposure in connection with, e.g., a DCFX forward. In order to facilitate this, MCM represents that it has made enhancements to its order entry system enabling traders to flag pre-hedging trades. This flagging allows the trading supervisor to more easily identify pre-hedging trades in the trade blotter.² The trading supervisor will then review those trades for any issues of concern, including, but not limited to, whether they may have disadvantaged the client, and escalate such issues of concern to MCM’s compliance personnel if warranted.

MCM represents that in October 2022 MCM updated its website’s pre-hedging disclosure to specify that pre-hedging by MCM “may be executed ... before—including but not limited to, within the seconds and minutes before—during, or after the pricing or consummation of any directly or indirectly related transactions between Mizuho and you.” The updated pre-hedging disclosure also advises clients that MCM’s pre-hedging may negatively impact price or liquidity and that “[t]his is particularly possible during times of low liquidity in the relevant market.”

MCM represents that it will implement a process to include a specific reference about MCM’s pre-hedging, along with a link to the pre-hedging disclosures on MCM’s website, in the long-form confirmations that MCM negotiates with clients in advance of every DCFX forward. MCM represents that it will agree to refrain from pre-hedging if requested by the client.

MCM represents that it has implemented new and more detailed training for its traders on the subject of “pre-hedging.” The training specifies that, “[p]re-hedging [must be] done in a manner not meant to disadvantage the Client or unduly negatively impact the market (this is particularly critical when pre-hedging occurs in the minutes and seconds prior to the Client trade, and/or during periods of low market liquidity).”

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Mizuho Capital Markets LLC violated Section 4s(h)(1)(B), (3)(B)(ii), and (3)(C) of the Act, 7 U.S.C. § 6s(h)(1)(B), (3)(B)(ii), (3)(C), and Regulations 23.431(a)(3)(ii), 23.433, and 23.602(a), 17 C.F.R. §§ 23.431(a)(3)(ii), 23.433, 23.602(a) (2022).

² The trading supervisor is required to review the trading blotter within five business days of the date the blotter becomes available.

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 (2022), relating to, or arising from, this proceeding;
 - 7. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
 - 8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer; 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 Section 4s(h)(1)(B), (3)(B)(ii), and (3)(C) of the Act, 7 U.S.C § 6s(h)(1)(B), (3)(B)(ii), (3)(C), and Regulations 23.431(a)(3)(ii), 23.433, and 23.602(a), 17 C.F.R. §§ 23.431(a)(3)(ii), 23.433, 23.602(a) (2022);
 - 2. Orders Respondent to cease and desist from violating Section 4s(h)(1)(B), (3)(B)(ii), and (3)(C) of the Act, and Regulations 23.431(a)(3)(ii), 23.433, and 23.602(a);
 - 3. Orders Respondent to pay restitution in the aggregate amount of one million eight hundred forty-seven thousand one hundred eighty-two dollars and ninety cents (\$1,847,182.90), such aggregate amount to be allocated among counterparties in the Subject Transactions, plus any post-judgment interest if not paid within thirty days

of the date of entry of this Order; Respondent shall confirm within sixty days of the entry of this order that the Restitution Obligation has been paid;

4. Orders Respondent to pay a civil monetary penalty in the amount of five million dollars (\$5,000,000), plus any post-judgment interest if not paid within thirty days of the date of entry of this Order; and
- F. Represents that it has already undertaken remedial measures to bring itself into greater compliance with the Standards, and to prevent inadequately disclosed Subject Trading of DCFX forward transactions in a manner that tends to move, or may contribute to moving, the spot exchange rate against the client, including, but not limited to, the following:
1. Implementing new policies and procedures requiring MCM FX traders to specifically designate trades as “pre-hedging” trades if intended by the trader to offset anticipated exposure in connection with, e.g., a DCFX forward;
 2. Issuing new and more detailed disclosures regarding MCM’s pre-hedging trading practices; and
 3. Implementing new and more detailed training for its traders on the subject of “pre-hedging” which specifies that “[p]re-hedging [must be] done in a manner not meant to disadvantage the Client or unduly negatively impact the market (this is particularly critical when pre-hedging occurs in the minutes and seconds prior to the Client trade, and/or during periods of low market liquidity).”

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 4s(h)(1)(B), (3)(B)(ii), and (3)(C) of the Act, 7 U.S.C § 6s(h)(1)(B), (3)(B)(ii), (3)(C), and Regulations 23.431(a)(3)(ii), 23.433, and 23.602(a), 17 C.F.R. §§ 23.431(a)(3)(ii), 23.433, 23.602(a) (2022).
- B. Respondent shall pay restitution in the aggregate amount of one million eight hundred forty-seven thousand one hundred eighty-two dollars and ninety cents (\$1,847,182.90), such aggregate amount to be allocated among counterparties in the Subject Transactions (“Restitution Obligation”), within thirty days of the date of the entry of this Order. If the Restitution Obligation is not paid in full within thirty days of the date of entry of this Order, then post-judgment interest shall accrue on the unpaid portion of the Restitution 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 confirm within sixty days of the entry of this order that the Restitution Obligation has been paid;
- C. Respondent shall pay a civil monetary penalty in the amount of five million dollars (\$5,000,000) (“CMP Obligation”), within thirty days of the date of the entry of this Order. If the CMP Obligation is not paid in full within thirty 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 266
Oklahoma City, OK 73169
9-amz-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.

- D. 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 and/or its agents' and/or employees': (a) testimonial obligations, or (b) 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. **Partial Satisfaction:** Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's Restitution Obligation or 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.
 3. **Change of Address/Phone:** Until such time as Respondent satisfies in full its Restitution Obligation and 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.
 4. **Until such time as Respondent satisfies in full its Restitution Obligation and 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

5. Implement new policies and procedures requiring MCM FX traders to specifically designate trades as “pre-hedging” trades if intended by the trader to offset anticipated exposure in connection with, e.g., a DCFX forward;
6. Issue new and more detailed disclosures regarding MCM’s pre-hedging trading practices; and
7. Implement new and more detailed training for its traders on the subject of “pre-hedging” which specifies that “[p]re-hedging [must be] done in a manner not meant to disadvantage the Client or unduly negatively impact the market (this is particularly critical when pre-hedging occurs in the minutes and seconds prior to the Client trade, and/or during periods of low market liquidity).”

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

By the Commission.



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

Dated: April 25, 2023