



## II. FINDINGS

The Commission finds the following:

### A. SUMMARY

On March 30, 2022, Challenger Life held a position in the New York Mercantile Exchange's ("NYMEX" or "Exchange") April 2022 Platinum futures contracts that exceeded the spot-month speculative position limit for that contract set forth in Regulation 150.2, 17 C.F.R. § 150.2 (2022), and Appendix E to Part 150 of the Regulations, 17 C.F.R. pt. 150 app. E (2022). By this conduct, Challenger Life violated Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2), and Regulation 150.2.

In addition, as of March 31, 2022 and May 9, 2022, Challenger Life exceeded the 500-contract delivery limit for the April 2022 and May 2022 Platinum futures contracts, respectively, set by NYMEX Rule 562. Those violations of NYMEX Rule 562 also constituted violations of Section 4a(e) of the Act, 7 U.S.C. § 6a(e).

### B. RESPONDENT

**Challenger Life Company Limited** is an Australian-based company and provider of annuities. Challenger Life is not registered with the Commission in any capacity.

### C. FACTS

Regulation 150.2, 17 C.F.R. § 150.2 (2022), and Appendix E to Part 150 of the Regulations, 17 C.F.R. pt. 150 app. E, set forth speculative position limit levels for NYMEX Platinum futures contracts. Pursuant to Regulation 150.2, no person may hold more than 500 NYMEX Platinum futures contracts (on a net futures-equivalent basis) during the contract spot month. Regulation 150.1 defines "spot month," in relevant part, as the period of time beginning at the earlier of "(i) [t]he close of business on the trading day preceding the first day on which delivery notices can be issued by the clearing organization of a contract market or (ii) [t]he close of business on the trading day preceding the third-to-last trading day and ending when the contract expires."

The spot month for the April 2022 NYMEX Platinum futures contract was from March 30, 2022 through April 27, 2022. At the close of business on March 30, 2022, Challenger Life held a net long futures position of 874 contracts in the NYMEX April 2022 Platinum futures contract, exceeding the applicable limit. Challenger Life did not qualify for an exemption under Regulation 150.3, 17 C.F.R. § 150.3 (2022), and therefore was not permitted to exceed the position limit set forth in Regulation 150.2.

Separately, pursuant to NYMEX Rule 562, a market participant may not make (issue) or take (stop) delivery of more than 500 net futures-equivalent NYMEX Platinum futures contracts unless they have received a hedge exemption from the Exchange.

On March 30, 2022, Challenger Life was stopped for delivery on 700 NYMEX April 2022 Platinum futures contracts and thus exceeded NYMEX's delivery limit of 500 contracts.

Challenger Life failed to retender the excess 200 certificates by the close of the next business day, and thus exceeded NYMEX’s Platinum futures expiration-month delivery limit of 500 contracts by 200 contracts.<sup>2</sup> On March 31, 2022, Challenger Life was stopped for delivery on 72 additional contracts, and Challenger Life failed to retender those additional certificates, or the preexisting excess 200 certificates, by the close of the next business day. Consequently, Challenger Life exceeded NYMEX’s Platinum futures expiration-month delivery limit of 500 contracts by 272 contracts. Additionally, with respect to the May 2022 NYMEX Platinum futures contract, as of May 9, 2022, Challenger Life had notified NYMEX of its intent to deliver on 536 contracts of NYMEX Platinum futures, thus again exceeding NYMEX’s delivery limit.

### **III. LEGAL DISCUSSION**

#### **A. Challenger Life Violated CFTC Spot Month Position Limits**

Section 4a(b)(2) of the CEA makes it unlawful for any person “directly or indirectly to hold or control a net long or a net short position in any commodity for future delivery on or subject to the rules of any contract market . . . in excess of any position limit fixed by the Commission for or with respect to such commodity. . . .” 7 U.S.C. § 6a(b)(2). Pursuant to Regulation 150.2 and Appendix E to Part 150 of the Regulations, no person may hold NYMEX Platinum futures positions during the spot month, net long or short, in excess of 500 contracts unless they qualify for an exemption under Regulation 150.3. 17 C.F.R. §§ 150.2, 150.3, pt. 150 app. E (2022). Challenger Life did not qualify for an exemption under Regulation 150.3 and therefore was not permitted to exceed the Commission’s position limit in NYMEX Platinum futures contracts.

On March 30, 2022, Challenger Life held a long NYMEX April 2022 Platinum futures contract position in excess of 500 contracts. Because Challenger Life did not qualify for any exemption under Regulation 150.3, Challenger Life violated Section 4a(b)(2) of the Act and Regulation 150.2.

The Commission does not need to establish scienter—i.e., proof of intent to exceed the applicable speculative position limit—in order to prove a violation of the Commission’s speculative position limit provisions. *CFTC v. Hunt*, 591 F.2d 1211, 1218 (7th Cir. 1979); *Saberi v. CFTC*, 488 F.3d 1207, 1212 (9th Cir. 2007). The Act “unambiguously imposes liability” for violations of speculative position limits. *Saberi*, 488 F.3d at 1212.

#### **B. Challenger Life Violated NYMEX’s Position Limits**

Section 4a(e) of the Act makes it unlawful for any person “to violate any bylaw, rule, regulation, or resolution of any contract market. . . designated . . . by the Commission fixing limits on . . . positions which may be held by any person under contracts of sale of any

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<sup>2</sup>According to CME Group’s Market Regulation Advisory Notice, effective January 4, 2022, regarding Exchange position limits and accountability levels, including Rule 562: “[i]f a person stops certificates for delivery in a quantity that would cause such person to exceed the certificate limit, the person must retender the quantity of certificates in excess of the limit no later than the close of business on the following business day. Failure to do so constitutes a position limit violation.” CME Group Market Regulation Advisory Notice RA2117-5 (effective Jan. 4, 2022).

commodity for future delivery . . . if such bylaw, rule, regulation, or resolution has been approved by the Commission or certified by a registered entity pursuant to section 5c(c)(1) . . . .” 7 U.S.C. § 7a-2(c)(1) (2018).

Pursuant to NYMEX Rule 562, a person may not make (issue) or take (stop) delivery of more than 500 net futures-equivalent contracts during the spot month in NYMEX Platinum futures contracts unless they have received a hedge exemption from the Exchange. *See* NYMEX Rule 562 (Position Limit, Position Accountability and Reportable Level Table, NYMEX Rulebook, Chapter 5); NYMEX Rule 105102.D; CME Group Market Regulation Advisory Notice RA2117-5 (effective Jan. 4, 2022). By exceeding the delivery limit in the NYMEX April 2022 and May 2022 Platinum futures contracts, as of March 31 and May 9, 2022, respectively, Challenger Life violated NYMEX Rule 562. Challenger Life’s violation of NYMEX Rule 562 also constituted a violation of Section 4a(e) of the Act.

The plain language of Section 4a(e) of the Act unambiguously imposes liability for violations of designated contract market position limit rules such as those at issue here. *Saberi*, 488 F.3d at 1212 (rejecting argument that proof of intent was required to establish violation of contract market’s position limits) (citing *Hunt*, 591 F.2d at 1218).

#### **IV. FINDINGS OF VIOLATION**

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Sections 4a(b)(2) and (e) of the Act, 7 U.S.C. §§ 6a(b)(2), (e) and Regulation 150.2, 17 C.F.R. § 150.2 (2022).

#### **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, 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 Respondents has consented in the Offer; and
- E. Consents, solely on the basis of the Offer, to the Commission’s entry of this Order that:
1. Makes findings by the Commission that Respondent violated Sections 4a(b)(2) and (e) of the Act and Regulation 150.2;
  2. Orders Respondent to cease and desist from violating Sections 4a(b)(2) and (e) of the Act and Regulation 150.2;
  3. Orders Respondent to pay a civil monetary penalty in the amount of one hundred fifty thousand dollars (\$150,000), plus any post-judgment interest; 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.

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 4a(b)(2) and (e) of the Act and Regulation 150.2.
- B. Respondent shall pay a civil monetary penalty in the amount of one hundred fifty thousand dollars (\$150,000) (“CMP Obligation”). If the CMP Obligation is not paid immediately in full, 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.

- 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 the Order or creating, or tending to create, the impression that the 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:** 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.
  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 the

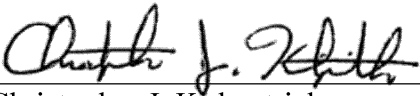
Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

4. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in the 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  
Office of the General Counsel  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street NW  
Washington, DC 20581

**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: June 29, 2023