

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Respondent failed to diligently supervise the activities of its New York-based Interest Rates Derivatives desk (“IRD Desk”) and New York Equity Derivatives Flow and Solution Trading desk (“FAST Desk”). In that time, traders on the IRD Desk and FAST Desk separately engaged in misconduct by mismarking their positions for the purpose of either inflating profits and minimizing losses, or to “smooth” out returns. As a result of the misconduct, Respondent’s books and records were inaccurate in several respects during the Relevant Period, and Respondent conveyed inaccurate swap valuation data and daily marks to a swap data repository (“SDR”) and certain swap counterparties, respectively, on numerous occasions.

In accepting Respondent’s Offer, the Commission recognizes the substantial cooperation of Natixis in connection with the Division’s investigation. The Commission also acknowledges Respondent’s representations concerning its remediation in connection with these matters. 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 is a global bank headquartered in Paris, France. Respondent is a provisionally registered swap dealer with the Commission since December 31, 2012.

C. FACTS

1. Interest Rate Derivatives Desk Violations

Between January 2015 and at least April 2018, a trader on Respondent’s IRD Desk (“Trader 1”) submitted false or misleading entries in Respondent’s internal recordkeeping and accounting system relating to the marking of the end-of-day USD LIBOR forward curve (“Closing Curve”), for the purpose of inflating the unrealized P&L of the desk he managed and disguising significant trading losses. Specifically, Trader 1 engaged in a pattern of marking the Closing Curve in a manner that varied from observed broker mid prices and 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. Trader 1 submitted or caused to be submitted false or misleading Closing Curve marks virtually every day during the Relevant Period, overstating the P&L of the IRD Desk by approximately \$25 million, at its peak in 2018.²

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.

² Natixis first identified indications of the IRD Desk issue beginning in or around February 2018. On April 24, 2018, in connection with Natixis’s investigation, Trader 1 resigned from his position (although the resignation was later reclassified as a termination for cause). 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

Although Respondent maintained certain controls during the Relevant Period relating to the marking of the Closing Curve, those controls were insufficient to detect Trader 1's misconduct, which continued undetected for a period of over three years. Specifically, while Respondent monitored the variance between individual points on the Closing Curve and required each point on the Closing Curve to be marked within one basis point of observable broker mid prices, Respondent failed to monitor the aggregate price impact of this variance across the entire Closing Curve; had it done so, Respondent would have learned that the Closing Curve marks submitted by Trader 1 were biased in a manner designed to inflate the unrealized P&L of the IRD Desk's trading book. Respondent, moreover, failed to sufficiently investigate Trader 1's method of marking the curve even though it was on notice of numerous instances in which Trader 1 submitted Closing Curve marks outside of the one basis point tolerance, and did not develop formal policies and procedures relating to the IRD Desk and the marking of the Closing Curve—including policies expressly requiring that the Closing Curve reflect observable mid-market prices—until early 2018.

Trader 1 was able to engage in this misconduct for over three years in large part because no other employee of the Respondent, including Trader 1's immediate supervisor ("Supervisor 1"), fully understood the process by which Trader 1 marked the Closing Curve. Specifically, although Supervisor 1 knew that Trader 1 marked the Closing Curve using complex spreadsheets of Trader 1's own design, Supervisor 1 did not fully understand how those spreadsheets worked. In 2016, Respondent sought to identify and validate every model then in use at the bank in the United States. Although Supervisor 1 was aware of the model validation project and knew that Trader 1 was using his own spreadsheet to mark the Closing Curve, Supervisor 1 did not inquire whether Trader 1's spreadsheets should be disclosed or ensure that Trader 1's spreadsheets were in fact disclosed.

In addition to rendering Respondent's internal books and records inaccurate as to the value of the IRD Desk's trading book, Trader 1's mismarks also caused Respondent to provide inaccurate valuation data to an SDR and inaccurate daily marks and margin calculations to certain swap counterparties on numerous occasions.

2. Equity Derivatives FAST Desk Violations

Respondent also failed to supervise diligently the activities of the FAST Desk during the Relevant Period. Between February 2017 and November 2019, traders on the FAST Desk made certain manual adjustments to Respondent's internal trade booking systems for the purpose of "smoothing" or hiding the FAST Desk's P&L, and later releasing the P&L during difficult market conditions. Among other things, the FAST Desk experienced a large single-day profit in February 2018; but, instead of booking that profit immediately, the head of the FAST Desk ("Trader 2") made manual adjustments to the valuations of other positions in the desk's trading book throughout the year in order to create the appearance of steadier P&L growth over time.

approximately \$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.

This misconduct rendered Respondent's books and records inaccurate. At its peak, Trader 2's P&L smoothing understated the unrealized P&L of the FAST Desk by over \$6 million.

As a result of the aforementioned conduct, Respondent's books and records were inaccurate. Moreover, Respondent failed to maintain internal controls that would have detected the misconduct. Specifically, among other things, respondent failed to maintain controls designed to detect and prevent improper manual modifications within Respondent's internal valuation systems.

III. LEGAL DISCUSSION

1. Natixis's Failure to Maintain Required Records in Violation of Sections 4s(f)(1)(C) and 4s(g)(1) and (3) of the Act and Regulations 23.202(a)(3) and 23.203(b)(1)

Section 4s(f)(1)(C) of the Act obligates swap dealers to keep "books and records of all activities related to its business as a swap dealer . . . in such form and manner and for such period as may be prescribed by the Commission by rule or regulation" and those books and records must be kept "open to inspection and examination by any representative of the Commission." 7 U.S.C. § 6s(f)(1)(C). Section 4s(g)(1) and (3) of the Act, 7 U.S.C. § 6s(g)(1), (3), additionally requires, in part, swap dealers to keep both their own and each counterparty's daily trading records. Regulation 23.202(a) requires swap dealers to ensure that their "records include all information necessary to conduct a comprehensive and accurate trade reconstruction for each swap." 17 C.F.R. § 23.202(a) (2021). Regulation 23.202(a)(3), in turn, requires swap dealers to make and keep records of post-execution trade information, including valuation and margining. 17 C.F.R. § 23.202(a)(3) (2021). Regulation 23.203(b)(1), 17 C.F.R. § 23.203(b)(1) (2021), further states that records required to be kept pursuant to Part 23 of the Regulations, be kept in accordance with Regulation 1.31, 17 C.F.R. § 1.31 (2021).

During the Relevant Period, as a result of the above-referenced conduct, Natixis failed to make and keep accurate books and records. By this conduct, Natixis violated Sections 4s(f)(1)(C) and 4s(g)(1) and (3) of the Act and Regulations 23.202(a)(3) and 23.203(b)(1).

2. Natixis's Failure to Report Accurate Swap Valuation Data to a Swap Data Repository in Violation of Sections 2(a)(13)(G) and 4r(a)(3) of the Act and Regulation 45.4(d)(2)

Sections 2(a)(13)(G) and 4r(a)(3) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 6r(a)(3), require that swaps be reported to an SDR and establish requirements for such reporting. This section of the Act and the Commission's implementing regulations in Parts 43 and 45 of the Regulations, 17 C.F.R. pts. 43, 45 (2021), were designed to enhance transparency, promote standardization, and reduce systemic risk. Regulation 45.4(d)(2) requires that "valuation data for a swap must be reported by" a swap dealer to an SDR on a "daily" basis. 17 C.F.R. § 45.4(d)(2) (2021). Regulation 45.1 defines "[v]aluation data" as "all of the data elements necessary to fully describe the daily mark of the transaction" 17 C.F.R. § 45.1 (2021). "The accuracy and completeness of swap data reporting are critical to the Commission's mission to protect market participants and to ensure market integrity." *In re Société Générale Int'l Ltd.*, CFTC No. 19-38,

2019 WL 4915485, at *6 (Sept. 30, 2019) (consent order) (collecting cases). The Commission requires complete and accurate reporting data to engage in meaningful oversight of the swaps market. *Id.*

As set forth above, Respondents failed to report accurate valuation data to an SDR for numerous swap transactions during the Relevant Period. By this conduct, Natixis violated Sections 2(a)(13)(G) and 4r(a)(3) of the Act and Regulation 45.4(d)(2).

3. Natixis’s Failure to Disclose Accurate Daily Marks to Counterparties, in Violation of Section 4s(h)(3) of the Act and Regulation 23.431(d)

Section 4s(h)(3) of the Act, 7 U.S.C. § 6s(h)(3), and Regulation 23.431(d), 17 C.F.R. § 23.431(d) (2021), require swap dealers to disclose to counterparties the daily mark of each uncleared swap transaction. The Regulations require that the daily mark “shall be the mid-market mark of the swap” and “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). The Regulations also require each swap dealer to disclose the “methodology and assumptions used to prepare the daily mark” and “any additional information concerning the daily mark to ensure a fair and balanced communication.” Regulation 23.431(d)(3), 17 C.F.R. § 23.431(d)(3) (2021). In adopting Regulation 23.431, the Commission stated that it would “consider good faith compliance with policies and procedures reasonably designed to comply with the business conduct standards rules as a mitigating factor when exercising its prosecutorial discretion for violation of the rules.” *Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties*, 77 Fed. Reg. 9,734, 9,744 (Feb. 17, 2012).

During the Relevant Period, Natixis, a swap dealer, failed numerous times to disclose accurate daily marks to counterparties for which Natixis was subject to daily mark requirements. Natixis therefore violated Section 4s(h)(1) of the Act and Regulation 23.431(d)(2).

Moreover, Natixis did not act in good faith compliance with policies and procedures reasonably designed to comply with business conduct standards rules. Prior to early 2018, Natixis did not have an effective written procedure describing its process and controls concerning marking the Closing Curve, which was used to determine daily marks. In light of these facts, Natixis does not meet the requirements of the Commission’s policy statement regarding mitigation.

4. Natixis’s Failure to Calculate Accurate Variation Margin, in Violation of Section 4s(e) of the Act and Regulation 23.155

Section 4s(e) of the Act, 7 U.S.C. § 6s(e), requires swap dealers to comply with capital and margin requirements, as established by regulation. Regulation 23.155(a)(1), 17 C.F.R. § 23.155(a)(1) (2021), in turn, requires swap dealers to calculate variation margin for themselves and for certain counterparties “using methods, procedures, rules, and inputs that to the extent practicable rely on recently-executed transactions, valuations provided by independent third parties, or other objective criteria.” Pursuant to Regulation 23.155(b)(1), 17 C.F.R.

§ 23.155(b)(1) (2021), swap dealers are required to “evaluate the reliability of its data sources at least annually, and make adjustments, as appropriate.”

During the Relevant Period, Natixis, a swap dealer, failed on numerous occasions to properly calculate variation margin in accordance with its regulatory requirements. Natixis therefore violated Section 4s(e) of the Act and Regulation 23.155.

5. Natixis’s Failure to Supervise Diligently in Violation of Sections 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 “diligent supervision of the business of the registered swap dealer[.]” Regulation 23.602 requires that each swap dealer “shall establish and maintain a system to supervise, and shall diligently supervise, all activities relating to its business performed by its partners, members, officers, employees, and agents (or persons occupying a similar status or performing a similar function).” 17 C.F.R. § 23.602(a) (2021).

Under Regulation 23.602, a violation is demonstrated by showing either that: (1) the registrant’s supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *See In re Société Générale S.A.*, CFTC No. 21-36, 2021 WL 4501471, at *8 (Sept. 29, 2021) (consent order); *In re Commerzbank AG*, CFTC No. 19-03, 2018 WL 5921385, at *10-11 (Nov. 8, 2018) (consent order) (noting textual similarities between Regulation 23.602 and Regulation 166.3, applying case law concerning Regulation 166.3, and citing cases); *In re INTL FCStone Markets, LLC*, CFTC No. 15-27, 2015 WL 4980321, at *3 (Aug. 19, 2015) (consent order) (same). 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.” *In re Société Générale Int’l Ltd.*, 2019 WL 4915485, at *7 (quoting *In re INTL FCStone Markets*, 2015 WL 4980321, at *3).

Natixis failed to supervise its swap dealer business activities diligently during the Relevant Period. Natixis failed to maintain an adequate supervisory system to ensure that employees properly marked the Closing Curve, and refrained from improper manual adjustments within its internal systems. Respondent’s failure to supervise is demonstrated by its failure to detect, prevent, and remediate repeated compliance failures over a multi-year period across the IRD Desk and FAST Desk. Supervisory personnel also failed to adequately ensure that employees complied with the Commission’s recordkeeping and other requirements. By this conduct, Natixis failed to supervise diligently its officers, employees, and agents, in violation of Section 4s(h)(1)(B) of the Act and Regulation 23.602(a).

6. Natixis’s Cooperation and Remediation

Natixis’s cooperation materially assisted the Division’s investigation. Natixis notified the National Futures Association and the Commission’s Market Participants Division about certain issues on the IRD Desk issues which led to the Division’s investigation. Natixis provided Division staff regular updates on the progress of its reviews; voluntarily provided documents and

information, made its employees and former employees available for interviews, and made presentations; and also conducted certain analyses to determine whether the valuation issues impacted swap data reporting, daily marks to counterparties, and variation margin and collateral management. Natixis's cooperation significantly conserved the time and resources of Division staff.

Natixis also represented to the Commission that it engaged in substantial remediation efforts and devoted substantial time and resources to those efforts. For example, Natixis developed and implemented new procedures for the marking and surveillance of the Closing Curve, and established a valuation committee to provide additional oversight on valuation matters. Natixis also implemented a process that any requests for modification of trades would be made to a separate trade support function. Natixis also undertook a larger remediation program, which implemented updated functionality to its systems across business lines.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Sections 2(a)(13)(G), 4r(a)(3), 4s(e), 4s(f), 4s(g), and 4s(h)(1)(B) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 6r(a)(3), 6s(e), 6s(f), 6s(g), 6s(h)(1)(B), and Regulations 23.155, 23.202(a)(3), 23.203(b)(1), 23.431(d)(2), 23.602(a), and 45.4(d)(2), 17 C.F.R. §§ 23.155, 23.202(a)(3), 23.203(b)(1), 23.431(d)(2), 23.602(a), 45.4(d)(2) (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, 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 Sections 2(a)(13)(G), 4r(a)(3), 4s(e), 4s(f), 4s(g), and 4s(h)(1)(B) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 6r(a)(3), 6s(e), 6s(f), 6s(g), 6s(h)(1)(B), and Regulations 23.155, 23.202(a)(3), 23.203(b)(1), 23.431(d)(2), 23.602(a), and 45.4(d)(2), 17 C.F.R. §§ 23.155, 23.202(a)(3), 23.203(b)(1), 23.431(d)(2), 23.602(a), 45.4(d)(2) (2021);
 2. Orders Respondent to cease and desist from violating Sections 2(a)(13)(G), 4r(a)(3), 4s(e), 4s(f), 4s(g), and 4s(h)(1)(B) of the Act, and Regulations 23.155, 23.202(a)(3), 23.203(b)(1), 23.431(d)(2), 23.602(a), and 45.4(d)(2);
 3. Orders Respondent to pay a civil monetary penalty in the amount of two million and eight hundred thousand dollars (\$2,800,000) (“CMP Obligation”), plus post-judgment interest within ten days of the date of entry of this Order;
 4. Orders Respondent 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 it has already undertaken steps to remediate the above-referenced violations, including but not limited to the following:
1. Terminating the employment of Trader 1, Trader 2 and Supervisor 1;
 2. Developing and implementing new procedures for the marking and surveillance of the Closing Curve;
 3. Establishing a U.S.-based Valuation Committee to provide an additional layer of governance and oversight on all valuation issues;
 4. Implementing a requirement that all front office managers attest that all models used within their respective areas of oversight have been disclosed for validation;

5. Issuing new guidance to front office traders not to manually modify fields in trade booking data and instructing traders that any requests for modification must be made to Respondent's Global Markets Operations function;
6. Developing a daily report in the United States to monitor modifications within its trading system;
7. Implementing new functionality within its trading system to prevent front office personnel from modifying trade data.

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)(G), 4r(a)(3), 4s(e), 4s(f), 4s(g), and 4s(h)(1)(B) of the Act, 7 U.S.C. §§ 2(a)(13)(G), 6r(a)(3), 6s(e), 6s(f), 6s(g), 6s(h)(1)(B), and Regulations 23.155, 23.202(a)(3), 23.203(b)(1), 23.431(d)(2), 23.602(a), and 45.4(d)(2), 17 C.F.R. §§ 23.155, 23.202(a)(3), 23.203(b)(1), 23.431(d)(2), 23.602(a), 45.4(d)(2) (2021).
- B. Respondent shall pay a civil monetary penalty in the amount of two million and eight hundred thousand dollars (\$2,800,000) ("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

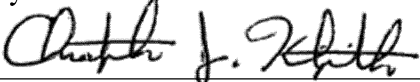
If payment is to be made by electronic funds transfer, Respondent shall contact Tonia King or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies 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.

- 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 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, 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.
 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.

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