

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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7:45 am, Aug 19, 2020

In the Matter of:

The Bank of Nova Scotia,
Respondent.

CFTC Docket No. 20-28

**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 April 2016 through October 2017 (“Relevant Period”), The Bank of Nova Scotia (“BNS”) violated Sections 6(c)(2) and 9(a)(4) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 9(2), 13(a)(4) (2018). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether BNS 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, BNS 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, except to the extent that BNS admits those findings in any related action against BNS by, or any agreement with, the United States Department of Justice (“DOJ”) or any other governmental agency or office, BNS 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 BNS 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. BNS 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. BNS 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

Before and during the Relevant Period, the Commission, through its Division of Enforcement (the “Division”), investigated BNS and traders on its precious metals trading desk for the disruptive trading practice of “spoofing” (bidding or offering with the intent to cancel the bid or offer before execution) (the “investigation”). BNS had disclosed to the Division that one of its traders, who BNS terminated, had engaged in spoofing. The Commission’s investigation resulted in *In re The Bank of Nova Scotia*, CFTC No. 18-50, 2018 WL 4828376 (Sept. 28, 2018) (*BNS I*).

After *BNS I*, the Commission discovered that BNS had made multiple false and misleading statements of material facts during the investigation. The Commission also discovered that BNS had omitted material facts, including omissions regarding the universe of BNS’s precious metals futures accounts, the identities of the traders who traded precious metals futures, and the order entry operator identifiers (“Tag50s”) traders—including the trader terminated for spoofing—used to trade precious metals futures. BNS’s misrepresentations and omissions violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2018).²

Relatedly, during the Relevant Period, BNS made multiple false statements to Commodity Exchange, Inc. (“COMEX”), via CME Group, Inc.’s Market Regulation Department (“CME Market Regulation”), regarding the bank’s failure to maintain a central repository of the Tag50s its traders used. Also during the Relevant Period, BNS made false statements to the National Futures Association (“NFA”) concerning its purported use of software to monitor manipulative or deceptive trading practices, including spoofing. BNS’s false statements or misrepresentations to COMEX and the NFA violated Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2018).

B. RESPONDENT

The Bank of Nova Scotia is a chartered schedule I bank on the Bank Act (Canada), headquartered in Toronto, Canada. BNS has been provisionally registered with the Commission as a Swap Dealer since December 31, 2012.

² BNS’s false statements concealed, and prevented the Commission from addressing, in *BNS I*, the true nature and scope of BNS’s spoofing. Today, the Commission is issuing a separate order instituting proceedings pursuant to Section 6(c) and (d) of the Act, making findings, and imposing remedial sanctions against BNS that address the underlying conduct concealed by BNS. *See In re The Bank of Nova Scotia*, CFTC No. 20-27 (Aug. 19, 2020) (“*BNS II*”) (imposing a \$42 million civil monetary penalty for spoofing and attempted manipulation in violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2018); for conduct occurring on or after July 16, 2011, Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018); and for conduct occurring on or after August 15, 2011, Section 6(c)(1) of the Act, 7 U.S.C. § 9(1)(2018), and Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2019)).

C. FACTS

1. False Statements to the Commission

In September 2018, the Commission accepted an Offer of Settlement from BNS to resolve its investigation in *BNS I* at an early stage. The Commission's decision to accept BNS's offer was predicated on certain representations BNS made during the investigation that were false or misleading. Specifically, during the course of the Commission's investigation in *BNS I*, the Division, on behalf of the Commission, issued multiple written requests to BNS to identify all accounts through which it traded precious metals futures contracts, all traders who traded those contracts, and all Tag50s those traders used to trade those contracts. In response, BNS submitted multiple letters to the Division that contained false or misleading statements, or omitted material information that would have made the statements not false or misleading. BNS's false statements and omissions resulted in part from BNS's incomplete and inconsistent record-keeping.

Over five written submissions between February and July 2017, BNS failed to identify three accounts through which it traded precious metals futures contracts, three traders who traded precious metals futures contracts, and at least twenty seven Tag50s that BNS traders used to trade precious metals futures contracts (certain of the traders used more than one Tag50). At the time BNS made each statement, BNS was in possession of records identifying these accounts, traders, and Tag50s, and therefore knew or reasonably should have known of the accounts, traders, and Tag50s that it failed to identify in its submissions. In addition to having certain of this information in its files, BNS's records reveal that it was contemporaneously reporting certain of the same trader and Tag50 information to COMEX, via CME Market Regulation, that it omitted reporting to the Division due in part to inconsistency in BNS's recordkeeping and reporting.

BNS failed to identify these errors to the Division and notify the Commission of its misrepresentations and omissions *before* it submitted its offer of settlement in *BNS I*. Ultimately, BNS's multiple misrepresentations and omissions prevented the Commission from addressing the true nature and scope of BNS's spoofing.

2. False Statements to COMEX and the NFA

As part of its official duties under the Act, COMEX, via CME Market Regulation, periodically conducts exams of each COMEX clearing member firm's compliance with the rules and requirements relating to electronic trading data accuracy and recordkeeping ("Electronic Trading Recordkeeping Exams").³ During the Relevant Period, COMEX conducted multiple Electronic Trading Recordkeeping Exams of BNS, which was a COMEX clearing member firm. On multiple occasions during these exams, in response to questions regarding how BNS maintained records of Tag50s, BNS falsely represented to COMEX that it kept a database of the Tag50s it had assigned to its traders by answering questions by referencing policy and procedure documents that were silent on the issue. These statements were false as the firm did not maintain a comprehensive repository of Tag50s at all times during the exams.

³ During the Relevant Period, COMEX was a board of trade designated as a contract market by the Commission. It is owned by CME Group Inc.

In addition, during the Relevant Period, BNS made false statements regarding its compliance program to the NFA, acting in furtherance of its duties under the Act.⁴ Specifically, a presentation to the NFA regarding the BNS's continuous monitoring program reflected, among other things, that BNS was using a software program to monitor for manipulative or deceptive trading activity, including spoofing, but failed to explain that BNS had not imported any trade order data into the program, rendering the program's monitoring for spoofing activity ineffective. The BNS compliance officials who prepared the slide presentation knew this portion of the presentation was false.

III. LEGAL DISCUSSION

A. **False Statements to the Commission in Violation of Section 6(c)(2) of the Act**

Section 6(c)(2) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018), makes it unlawful for any person:

[T]o make any false or misleading statement of a material fact to the Commission . . . or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading.

During the Commission's investigation into spoofing by traders on BNS's precious metals trading desk, BNS provided incomplete information to the Commission, rendering its statements to Commission staff false and misleading regarding the universe of accounts through which BNS traded precious metals futures, all of the traders who traded precious metals futures, and the Tag 50s its traders used to trade precious metals futures. The statements were material as they concerned the very subject the Commission was investigating—BNS's precious metals futures trading. BNS knew or reasonably should have known that its statements were false or misleading as it had in its records the accounts, trader names, and Tag50s it omitted from its representations to the Commission. By engaging in this conduct, BNS violated Section 6(c)(2) of the Act.

B. **False Statements to COMEX and the NFA in Violation of Section 9(a)(4) of the Act**

Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2018), makes it unlawful for any person "willfully to . . . make any false, fictitious, or fraudulent statements or representations . . . to a registered entity, board of trade, . . . or futures association designated or registered under [the Act] acting in furtherance of its official duties under [the Act]." As described above, BNS willfully made false statements to COMEX, via CME Market Regulation, acting in furtherance of its duties under the Act, and to the NFA, acting in furtherance of its duties under the Act. By engaging in this conduct, BNS violated Section 9(a)(4) of the Act.

⁴ During the Relevant Period, the NFA was a futures association registered under the Act.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, BNS violated Sections 6(c)(2) and 9(a)(4) of the Act, 7 U.S.C. § 9(2), 13(a)(4) (2018).

V. OFFER OF SETTLEMENT

BNS has submitted the Offer in which, 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 (2018) and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2019), 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 BNS 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 BNS violated Sections 6(c)(2) and 9(a)(4) of the Act, 7 U.S.C. § 9(2), 13(a)(4) (2018);
2. Orders BNS to cease and desist from violating Sections 6(c)(2) and 9(a)(4) of the Act;
3. Orders BNS to pay a civil monetary penalty in the amount of seventeen million dollars (\$17,000,000) plus post-judgment interest if the civil monetary penalty is not paid in full within ten business days of the date of the entry of this Order; and
4. Orders BNS 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. BNS and its successors and assigns shall cease and desist from violating Sections 6(c)(2) and 9(a)(4) of the Act, 7 U.S.C. § 9(2), 13(a)(4) (2018).
- B. BNS shall pay a civil monetary penalty in the amount of seventeen million dollars (\$17,000,000) within ten business days of the date of the entry of this Order (“CMP Obligation”). If the CMP Obligation is not paid in full or otherwise satisfied within ten business days of the date of the entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date following entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of the entry of this Order pursuant to 28 U.S.C. § 1961 (2018).

BNS 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, 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
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 181
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 facsimile
9-AMC-AR-CFTC@faa.gov

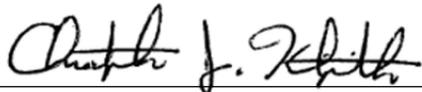
If payment is to be made by electronic transfer, BNS shall contact Marie Thorn or her successor at the above address to receive payment instructions and shall fully comply with those instructions. BNS shall accompany payment of the CMP Obligation with a

cover letter that identifies BNS and the name and docket number of this proceeding. BNS 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, DC 20581.

- C. BNS and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: BNS agrees that neither it nor any of its successors, 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': (i) testimonial obligations; or (ii) right to take positions in other proceedings to which the Commission is not a party. BNS and its successors and assigns shall comply with this Order, 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: BNS understands and agrees that any acceptance by the Commission of partial satisfaction of BNS'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.
 3. Change of Address: Until such time as BNS satisfies in full its CMP Obligation as set forth in this Order, BNS shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten 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: August 19, 2020