



UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

Deutsche Bank AG

Respondent.

CFTC Docket No. 15-40

ORDER INSTITUTING PROCEEDINGS PURSUANT TO  
SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, MAKING  
FINDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from in or about January 2013 to at least July 2015 (the “Relevant Period”), Deutsche Bank AG (“Respondent” or “Deutsche Bank”) violated Commission Regulations (“Regulations”) 43.3(a), (e), 45.4(a), 45.14(a), and 23.602, 17 C.F.R. §§ 43.3(a), (e), 45.4(a), 45.14(a), and 23.602 (2014). 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.

II.

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 Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledge service of this Order.<sup>1</sup>

<sup>1</sup> Respondent consents to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondent does not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the

### III.

The Commission finds the following:

#### A. SUMMARY

As a provisionally registered swap dealer, Deutsche Bank is required to comply with certain disclosure, recordkeeping and reporting requirements related to its swap transactions. Specifically, Commission Regulations specify requirements for real-time public reporting, public availability of swap transaction and pricing data, and reporting of creation and continuation data. *See* 17 C.F.R. §§ 43, 45 (2014). Regulations 43 and 45 also include requirements for a reporting counterparty to report and correct errors and omissions in its swap reporting, including cancellations, to the registered swap data repository (“SDR”) to which the reporting counterparty originally reported the swap. *Id.* The reporting requirements are designed to enhance transparency, promote standardization, and reduce systemic risk.

Reporting is at the heart of the Commission’s market and financial surveillance programs, which are critical to the Commission’s mission to protect market participants and promote market integrity. Accurate swap data is thus essential to effective fulfillment of the regulatory functions of the CFTC, including meaningful surveillance and enforcement programs. Moreover, real-time public dissemination of swap transaction and pricing data supports the fairness and efficiency of markets and increases transparency, which in turn improves price discovery and decreases risk.

During the Relevant Period, Deutsche Bank failed to properly report cancellations of swap transactions in all asset classes, which in the aggregate included between tens of thousands and hundreds of thousands of reporting violations and errors and omissions in its swap reporting. Deutsche Bank also misused cancellation messages for non-cancellation events. Deutsche Bank was aware of the problems relating to the cancellation messages but failed to provide timely notice to the SDR about the problems and failed to timely investigate, address and remediate the problems. Deutsche did not diligently address the problems until it was notified of the Division of Enforcement’s investigation.

Because of Deutsche Bank’s reporting failures, misinformation was disseminated to the market through the real time public tape and to the CFTC. Deutsche Bank’s reporting failures resulted in part due to deficiencies with its swaps supervisory system.

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In accepting Deutsche Bank’s Offer, the Commission recognizes Deutsche Bank’s significant cooperation during the investigation of this matter by the CFTC Division of Enforcement (“Division”), which included undertaking an internal investigation, self-reporting,

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findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

taking corrective actions and increasing internal controls to help detect and prevent swaps reporting deficiencies going forward.<sup>2</sup>

## **B. RESPONDENT**

**Deutsche Bank AG** is a German global banking and financial services company headquartered in Frankfurt, Germany. Deutsche Bank operates in over 70 countries and has offices in major financial centers including Frankfurt, London, New York City, Tokyo, Singapore, and Hong Kong. On December 31, 2012, Deutsche Bank was provisionally registered as a swap dealer with the Commission.

## **C. FACTS**

### **1. Applicable Regulatory Requirements for Reporting Parties**

To enhance transparency, promote standardization, and reduce systemic risk, Section 727 of the Dodd-Frank Act added to the Commodity Exchange Act a provision that requires all swaps, both cleared and uncleared, be reported to a registered swap data repository and establishes requirements for real-time reporting and public availability of swap transaction data. *See* 7 U.S.C. §2(a)(13)(G) (2012). Pursuant to these requirements, the Commission adopted implementing regulations, including under Parts 43 and 45; the requirements under these regulations were phased-in based upon asset classes. *See Real-Time Public Reporting of Swap Transaction Data*, 77 Fed.Reg. 1182 (Jan. 9, 2012); *Swap Data Recordkeeping and Reporting Requirements*, 77 Fed.Reg. 2136 (Jan. 13, 2012).

Part 43 establishes requirements for the real-time public reporting and public availability of swap transaction data. *See* 17 C.F.R. §§ 43.2, 43.3 (2014). Under Part 43, reporting parties must report a publicly reportable swap transaction to an SDR as soon as technologically practicable after the swap transaction is executed. *See* 17 C.F.R. § 43.3(a)(1) (2014). A publicly reportable swap transaction is defined in Regulation 43.2 and includes, among other things, “[a]ny termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap that changes the pricing of a swap.” 17 C.F.R. § 43.2 (2014). A cancellation, as an extinguishing of rights or obligations of a swap, would thus be required to be reported for purposes of Part 43 if it changes the price of a previously reported swap.

Part 45 requires reporting parties to, among other things, report swap creation and continuation data to ensure that all data concerning a swap remains current and accurate. 17 C.F.R. §§ 45.3, 45.4 (2014). Reporting parties can comply with the continuation data requirement by “reporting life cycle event data or state data for the swap ...” 17 C.F.R. § 45.4(a) (2014). The Regulations define a life cycle event to include “any event that would

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<sup>2</sup> The Commission has long given credit for cooperative conduct by respondents and defendants when determining the appropriate level of sanctions to impose or approve in enforcement actions. *See* CFTC Policy Statement Relating to the Commission’s Authority to Impose Civil Money Penalties, [1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,265 (November 1, 1994); *See also* 2004 Enforcement Advisory on Cooperation, *Cooperation Factors in Enforcement Division Sanction Recommendations*, available at <http://www.cftc.gov/ucm/groups/public/@cpdisciplinaryhistory/documents/file/enfcooperation-advisory.pdf>

result in either a change to a primary economic term of a swap or to any primary economic terms data previously reported to a swap data repository in connection with a swap[,]" including among other things, a "partial or full termination of the swap," a "change to the end date for the swap," and "a change in the cash flows or rates originally reported." 17 C.F.R. § 45.1 (2014). Thus swap cancellations must be reported in accordance with Regulation 45.4 as continuation data.

The Regulations also require reporting parties to correct any errors or omissions in their swap reporting. Under Part 43, the reporting counterparty must report all errors and omissions in swap transaction and pricing data that were publicly disseminated promptly after discovery of the error or omission along with the correct data. 17 C.F.R. § 43.3(e)(1) (2014). Under Part 45, the reporting counterparty must report a correction of errors or omissions as soon as technologically practicable after discovery of the error. 17 C.F.R. § 45.14(a) (2014).

Because of the importance of the swap reporting requirements, the Commission further requires swap dealers to:

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 function). Such system shall be reasonably designed to achieve compliance with the requirements of the Commodity Exchange Act and Commission regulations.

17 C.F.R. § 23.602 (2014).

## **2. Failure to Properly Report Cancellations**

Throughout the Relevant Period, Deutsche Bank failed to properly report cancellations of its swap transactions. The scope and nature of the problems differed by asset class, but in the aggregate included between tens of thousands and hundreds of thousands of reporting violations and errors and omissions in its reporting. For example, from December 31, 2012 ("go live") until December 2014, Deutsche Bank had thousands of reportable swap cancellations in the rates and credit asset classes, yet it failed to send any cancellation messages in the interest rates asset class for Part 45 and it failed to send any cancellation messages for Part 43 in the credit asset class.

Deutsche Bank further had problems with cancellation messages that were in fact sent to its SDR. When Deutsche Bank sends cancellation messages to its SDR it receives an acknowledgement if the SDR ingests the message and a non-acknowledgement ("NACK") if the SDR does not successfully receive the message. During the Relevant Period, Deutsche Bank sent over 38,000 cancellation messages to its SDR related to swap transactions that had been previously reported, but Deutsche Bank received NACKs from the SDR in response to those messages. Deutsche Bank also sent over 215,000 cancellation messages for which it receive no response from its SDR. Deutsche Bank failed to timely investigate and address the problems behind the tens of thousands of NACKs and hundreds of thousands of messages with no response until at the earliest April 2014.

Further, Deutsche Bank had technology related issues, including problems determining whether a swap cancellation was Dodd-Frank eligible and/or reportable, which impacted over 70,000 transactions.

Significantly, Deutsche Bank was aware of problems with its reporting of cancellations from go live and acknowledged its failure to report cancellations in the rates asset class as required in response to a special call with the Commission's Division of Market Oversight in the fall of 2013, yet Deutsche Bank did not diligently prioritize resolution of those issues or work with its SDR to address the issues in earnest until Deutsche Bank was notified of the Division of Enforcement's investigation in June 2014. Because of Deutsche Bank's reporting failures, misinformation was disseminated to the market through the real time public tape and to the CFTC.

### **3. Improper Use of Cancellation Messages**

Deutsche Bank improperly used cancellation messages for non-cancellation events during the Relevant Period. For example, Deutsche Bank sent cancellation messages for purposes of reporting block trades in the FX asset class and novations in the commodities asset class. Misuse of cancellation messages provides incorrect information to the market and the Commission by making it look like more trades were executed than actually occurred.

### **4. Failure to Correct Errors and Omissions in Reporting**

Despite knowledge of problems throughout the Relevant Period, Deutsche Bank failed to timely notify its SDR of its problems reporting cancellations and its misuse of cancellation messages. While Deutsche Bank discussed with its SDR one issue related to the credit asset class in the first quarter of 2013, the problem was not resolved at that time and Deutsche Bank had no further discussions with its SDR focused on cancellations in any asset class until approximately September 2014.

During the Relevant Period, Deutsche Bank did not submit corrected data to its SDR to reflect that certain transactions that were reported and publicly disseminated should be reflected as cancelled. Deutsche Bank began discussing how to undertake this effort with its SDR for the first time in March of 2015.

As of March 2015, Deutsche Bank has updated its reporting for Part 45 for the rates, commodities and equities asset classes such that the information now accurately reflects trades that were cancelled in each of those asset classes.

Finally, during the Relevant Period, Deutsche Bank did not modify the cancellation messages sent for non-cancellation events.

### **5. Failure to Diligently Supervise Swaps Activities**

Deutsche Bank's reporting failures resulted in part due to deficiencies with its swaps supervisory system. Deutsche Bank did not have an adequate system to supervise all activities

related to compliance with the swaps reporting requirements until at least some time between April and July of 2014 – well after its reporting obligations went into effect in December 2012.

Deutsche Bank retained a consulting company to advise the company concerning its swaps reporting program and to help prepare business requirements to improve their processes. As part of that process, Deutsche Bank restructured the roles and responsibilities of the regulatory operations group by approximately July of 2014. In addition to the organizational changes, Deutsche Bank developed and implemented reports to help improve oversight of accuracy and effectiveness of its reporting, including reports to track and provide ownership for NACKs, enhancing the functionality of certain reports that identified exceptions warranting action, distributing a management information email on a regular basis that provided transparency on Deutsche Bank's success rate vis a vis its reporting to the SDR.

#### IV.

#### LEGAL DISCUSSION

Deutsche Bank violated Regulations 43.3(a) and 45.4(a) when it failed to properly report cancellations of its swap transactions across all asset classes during the Relevant Period. Deutsche Bank further violated Regulations 43.3(e) and 45.14(a) when it failed to correct the errors and omissions in its swap reporting, including its over-reporting and misuse of cancellation messages, during the Relevant Period. Deutsche Bank's swap reporting violations stemmed in part from deficiencies with its swaps supervisory system in violation of Regulation 23.602. As described more fully in the Regulatory Requirements for Reporting Parties section above, these Regulations require reporting parties to timely and accurately report cancellation messages that constitute publicly reportable swap transactions (Part 43) or continuation data (Part 45) and to correct any errors in swap reporting to ensure that the information disseminated to the market and the Commission remains current and accurate. The supervisory requirement in Regulation 23.602 underscores the importance of compliance with the swap reporting obligations.

The accuracy and completeness of swap reporting are critical to the Commission's mission to protect market participants and to ensure market integrity. *See, e.g., In re ICE Futures U.S.*, CFTC No. 15-17 (CFTC Mar. 16, 2015) (consent order); *In re Deutsche Bank Securities Inc.*, CFTC No. 15-11 (CFTC Dec. 22, 2014) (consent order); *In re JP Morgan Securities LLC*, CFTC No. 14-19 (July 29, 2014) (consent order). Market participants rely upon the public availability of swaps data for price discovery purposes. The Commission, in turn, requires complete and accurate reporting data to engage in meaningful oversight of the swaps market

The foregoing acts, omissions, and failures of Deutsche Bank's employees occurred within the scope of their employment, office, or agency with Deutsche Bank; therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2014), Deutsche Bank is liable for those acts, omissions, and failures in violation of Regulations 43.3(a), (e), 45.4(a), 45.14(a), and 23.602, 17 C.F.R. §§ 43.3(a), (e), 45.4(a), 45.14(a), and 23.602 (2014).

## V.

### FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Deutsche Bank AG violated Regulations 43.3(a), (e), 45.4(a), 45.14(a) and 23.602, 17 C.F.R. §§ 43.3(a), (e), 45.4(a), 45.14(a) and 23.602 (2014).

## VI.

### 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 (2012) and 28 U.S.C. § 2412 (2012), 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 (2014), 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 (2007), 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 Respondent violated Regulations 43.3(a), (e), 45.4(a), 45.14(a) and 23.602, 17 C.F.R. §§ 43.3(a), (e), 45.4(a), 45.14(a) and 23.602 (2014);
  2. Orders Respondent to cease and desist from violating Regulations 43.3(a), (e), 45.4(a), 45.14(a) and 23.602, 17 C.F.R. §§ 43.3(a), (e), 45.4(a), 45.14(a) and 23.602 (2014);
  3. Orders Respondent to pay a civil monetary penalty in the amount of two million and five-hundred thousand dollars (\$2,500,000), plus post-judgment interest; and
  4. Orders Respondent and their successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Offer.

## VII.

### ORDER

#### Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Regulations 43.3(a), (e), 45.4(a), 45.14(a) and 23.602, 17 C.F.R. §§ 43.3(a), (e), 45.4(a), 45.14(a) and 23.602 (2014);
- B. Respondent pay a civil monetary penalty in the amount of two million and five-hundred thousand dollars (\$2,500,000), within ten (10) days of the date of entry of this Order (the "CMP Obligation"). If the CMP Obligation is not paid in full within ten (10) 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 (2012).

Respondent shall pay the CMP Obligation 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:

Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Accounts Receivables  
DOT/FAA/MMAC/AMZ-341



CFTC/CPSC/SEC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
(405) 954-7262 office  
(405) 954-1620 fax  
nikki.gibson@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent(s) 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:

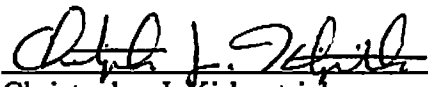
1. Remediation:

- a. Respondent will implement and improve its internal controls and procedures in a manner reasonably designed to ensure the accuracy and integrity of its swaps reporting, including measures to identify and rectify deficiencies related to swaps cancellations. Specifically, Deutsche Bank undertakes to:
  - Complete the process of revising Deutsche Bank's reporting systems to properly submit cancellation messages to its SDR in compliance with Section 2 of the Act and Regulations 43.3(a) and 45.4.
  - Implement improved completeness and quality assurance controls in connection with Deutsche Bank's reporting obligations under Section 2 of the Act and Regulations 43.3(e)(1) and 45.14(a).
  - Develop and implement processes and procedures to investigate and address notification messages received from its SDR (including NACK messages), and to investigate and address instances where Deutsche Bank does not receive any response from its SDR after sending a cancellation message.
  - Correction of current known issues with respect to Deutsche Bank's automated reporting of cancellations, block/allocation events, and SEF executed and cleared trades, in order to avoid related under or over reporting of transactions.
  - Correct the record with its SDR in compliance with Regulation 45.14(a).

- Implement policies, procedures and training programs reasonably designed to ensure that cancellation messages are not improperly used to report non-cancellation life cycle events.
  - Implementation of improved supervisory practices related to Part 43 and Part 45 reporting activities, including by having Deutsche Bank's Swaps Reporting Executive and Dodd Frank Title VII Steering Committees monitor and oversee remediation efforts.
2. **Compliance with Undertakings:** Every six (6) months, starting from the entry of this Order, Deutsche Bank shall make interim reports to the Commission, through the Division, explaining its progress towards compliance with the Undertakings set forth herein. Within 18 months from entry of this Order, Deutsche Bank shall submit a report to the Commission, through the Division, explaining how it has complied with the Undertakings set forth herein. The report shall attach copies of and describe the internal controls, policies and procedures that have been designed and implemented to satisfy the Undertakings, along with a report on the status of the remediation efforts, completeness and quality assurance controls, and correction of the record with DTCC. The report shall contain a certification from a representative of Deutsche Bank's Executive Management that Deutsche Bank has complied with the Undertakings set forth above, and that it has established policies, procedures, and controls to satisfy the Undertakings set forth in the Order.
  3. **Public Statements:** Respondent agrees that neither it nor any of its successors or 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 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.
  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.

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

By the Commission.

A handwritten signature in black ink, appearing to read "Christopher J. Kirkpatrick", is written over a horizontal line.

Christopher J. Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: September 30, 2015