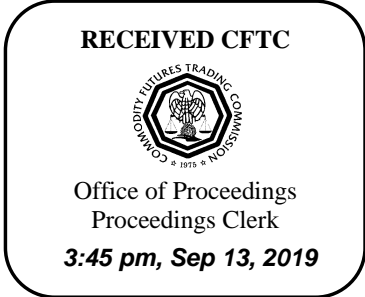


**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**



**In the Matter of:** )  
 )  
 )  
 **Tullett Prebon Americas Corp.,** ) **CFTC Docket No. 19-25**  
 )  
 )  
 **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 at least October 12, 2012, to at least December 2014 (the “Relevant Period”), Tullett Prebon Americas Corp. (“Respondent” or “Tullett”), a registered introducing broker (“IB”), violated Commission Regulation (“Regulation”) 166.3, 17 C.F.R. § 166.3 (2018). 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 as set forth herein and to determine whether any order shall 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 6(d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.<sup>1</sup>

<sup>1</sup> 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.

## II. FINDINGS

The Commission finds the following:

### A. SUMMARY

During the Relevant Period, Tullett failed to diligently supervise brokers on its U.S. Dollar Medium-Term Interest Rate Swaps Desk (the “Desk”) to prevent and detect potential violations of the federal commodities laws. Specifically, certain Tullett brokers made false or misleading statements to Tullett customers relating to, among other things, certain executed trades and bids and offers.

Tullett had policies that prohibited conveying false or misleading information to customers. But Tullett failed to implement procedures to monitor for and prevent the types of false or misleading statements that are the subject of this Order. Due to this deficiency, Tullett failed to perform meaningful oversight of the conduct of its brokers on the Desk, even after a Tullett employee questioned the brokers’ practices. Tullett therefore failed to adequately supervise activities relating to its business as a Commission registrant in violation of Regulation 166.3, 17 C.F.R. § 166.3 (2018).

### B. RESPONDENT

**Tullett Prebon Americas Corp.** is a domestic brokerage service firm providing intermediary services to institutional customers in a variety of different products, including interest rate derivatives, foreign exchange, and energy products. Its headquarters is located at 200 Vesey Street, New York, New York, 10285.

Tullett filed an application to be registered with the Commission as an IB on September 27, 2012. It has been registered as an IB since September 30, 2013.

### C. FACTS

#### 1. Tullett’s Medium-Term Interest Rates Swaps Desk

During the Relevant Period, Tullett operated as an interdealer broker (“IDB”), acting as an intermediary for customers seeking to buy or sell “over-the-counter” U.S. dollar-denominated medium-term interest rate swaps (“instruments” or “swaps”).<sup>2</sup> The Desk primarily interacted with its customers via recorded telephone lines in a practice known as voice-brokering. Tullett brokers received bids and offers from customers and communicated those bids and offers to other Tullett customers. In doing so, Tullett brokers created a “liquidity pool,” or a group of

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<sup>2</sup> While these swaps can take various forms, one of the most common intermediate term interest rate swaps is an outright swap of fixed for floating interest rates, also referred to as a semi-bond trade or a “straight swap.” The intermediate term interest rate swap transactions brokered by the Desk are known in the industry as “medium-term” interest rate swaps, which are swaps that cover maturities (or “tenors”) from two to thirty years (and sometimes up to fifty or sixty years).

potential buyers and sellers of medium-term interest rate swaps, for whom Tullett facilitated trades. When trades were consummated at Tullett, Tullett brokers generally reported those trades to its other customers, a practice known as “announcing trades.” Tullett earned commissions for trades that were consummated by Tullett’s customers which had been arranged (or brokered) by Tullett brokers. Tullett paid its brokers a portion of the commission that Tullett earned for the transactions that the brokers consummated.<sup>3</sup>

In 2011, a Tullett employee raised concerns to Tullett’s compliance department that certain brokers on the Desk were giving customers false or misleading information about certain executed trades and bids and offers. Notwithstanding this employee complaint, Tullett did not adequately enhance its procedures to ensure its employees provided true and accurate information to Tullett customers. Indeed, certain brokers on the Desk continued to provide customers false or misleading information about certain executed trades, bids, and offers throughout the Relevant Period.

## **2. The Failure To Supervise**

Throughout the Relevant Period, Tullett was aware of the risk that brokers might provide customers with misleading information and developed and issued internal policies that expressly prohibited such practices. For example, Tullett’s Code of Conduct for employees prohibited brokers from reporting “non-existing markets or trades.” Tullett sent memos to the brokers reinforcing this prohibition. For example, in May 2013, Tullett circulated a memo to brokers titled “Tullett Prebon Americas Corp. and subsidiaries policy against reporting non-existing markets or trades.” This memo stated, “[a]s a reminder, all brokers are strictly prohibited from reporting or offering to report non-existing markets or trades.” Similarly, in 2015, Tullett implemented a new “Swaps Firm Policies and Procedures Manual” which included a section entitled “Supervision,” which stated that, “it is strictly prohibited for any sales personnel to: (1) Use high pressure sales tactics; (2) Knowingly make any false statement.”

Notwithstanding its publication of policies against Desk brokers using false or misleading information, Tullett failed to implement supervisory procedures reasonably designed to prevent such activity.

## **III. LEGAL DISCUSSION**

Regulation 166.3, 17 C.F.R. § 166.3 (2018), imposes on every Commission registrant (except associated persons who have no supervisory duties) an affirmative duty to “diligently supervise the handling by its partners, officers, employees and agents . . . of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents . . . relating to its business as a Commission Registrant.” In adopting the rule, the Commission stated that its “basic purpose . . . is to protect customers by ensuring that their dealings with the employees of Commission registrants will be

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<sup>3</sup> The regulation of swap dealers is governed by Section 4s of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6s (2012), and Part 23 of the Regulations, 17 C.F.R. pt. 23 (2018).

reviewed by other officials in the firm.” Adoption of Customer Protection Rules, 43 Fed. Reg. 31,886, 31,889 (July 24, 1978) (“Final Rules”). Regulation 166.3 thus imposes upon registrants an affirmative duty to supervise their employees and agents diligently by establishing, implementing, and executing an adequate supervisory structure and compliance programs.

In order to prove a violation of Regulation 166.3, the Commission must demonstrate that either: (1) the registrant’s supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *In re GNP Commodities, Inc.*, CFTC No. 89-1, 1992 WL 201158, at \*19 (Aug. 11, 1992), *aff’d sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993); Final Rules, 43 Fed. Reg. at 31,889. A violation under Regulation 166.3 is an independent violation for which no underlying violation is necessary. *See, e.g., In re Collins*, CFTC No. 94-13, 1997 WL 761927, at\*10 (Dec. 10, 1997) (“It is well settled that a violation under Rule 166.3 is ‘an independent and primary violation for which no underlying violation is necessary.’” (citation omitted)); *GNP Commodities*, 1992 WL 201158, at \*17 n.11 (“Rule 166.3 establishes failure to supervise as an independent and primary violation . . .” (citation omitted)).

“[A] showing that the registrant lacks an adequate supervisory system can be sufficient to establish a breach of duty under Rule 166.3.” *Collins*, 1997 WL 761927, at \*10 (citing *In re First Nat’l Trading Corp.*, CFTC Nos. 90-28, 92-17, 1994 WL 378010, at \*10 (July 20, 1994), *aff’d without op. sub nom. Pick v. CFTC*, 99 F.3d 1139 (6th Cir. Oct. 21, 1996)). The lack of an adequate supervisory system can be established by showing that the registrant failed to develop proper procedures for the detection of wrongdoing. *CFTC v. Trinity Fin. Grp, Inc.*, No. 92-cv-6832, 1997 WL 820970, at \*29 (S.D. Fla. Sept. 29, 1997) (controlling person failed to establish or maintain meaningful procedures for detecting fraud by firm’s employees and controlling person knew of specific incidents of misconduct, yet failed to take reasonable steps to correct the problems), *aff’d in part, vacated in part, and remanded sub nom. CFTC v. Sidoti*, 178 F.3d 1132, 1137 (11th Cir. 1999). Where a supervisory system was in place, the issue is whether it was diligently administered. *In re Paragon Futures Ass’n*, CFTC No. 88-18, 1992 WL 74261, at \*14 (Apr. 1, 1992) (“[T]he focus of any proceeding to determine whether Rule 166.3 has been violated will be on whether such review occurred and, if it did, whether it was ‘diligent.’”); *Collins*, 1997 WL 761927, at \*10.

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. *Paragon Futures*, CFTC No. 88-18, 1992 WL 74261, at \*14. A registrant can also be liable for failure to supervise if it “knew of specific instances of misconduct, yet failed to take reasonable steps to correct the problems.” *Sidoti*, 178 F.3d at 1137.

The duty to supervise “expands a registrant’s focus beyond the consequences of its agents’ wrongful acts to include the broader goals of detection and deterrence of possible wrongdoing by a [registrant’s] agents.” *Lobb v. J.T. McKerr & Co.*, CFTC No. 85R-185, 1989 WL 242384, at \*11 (Dec. 14, 1989). Accordingly, under Regulation 166.3, registrants have a “duty to develop procedures for ‘the detection and deterrence of possible wrongdoing by its

agents.”” *Sansom Refining Co. v. Drexel Burnham Lambert, Inc.*, CFTC No. 82-R448, 1990 WL 282783, at \*11 (Feb. 16, 1990) (quoting *Lobb v. J.T. McKerr & Co.*, 1989 WL 242384, at \*11).

Tullett failed to have in place an adequate supervisory system and failed to perform its supervisory duties diligently as to the Desk. Specifically, Tullett knew or should have known that certain Tullett brokers were conveying certain false or misleading information to customers, yet Tullett failed to take adequate steps in response. Tullett therefore failed to supervise diligently its officers, employees, and agents and did not have sufficient procedures in place to detect and deter misconduct, in violation of Regulation 166.3.

#### **IV. FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that during the Relevant Period, Tullett violated Regulation 166.3, 17 C.F.R. §166.3 (2018).

#### **V. OFFER OF SETTLEMENT**

Respondent has submitted an 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 (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. pt. 148 (2018), 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 Regulation 166.3, 17 C.F.R. § 166.3 (2018);
  2. orders Respondent to cease and desist from violating Regulation 166.3;
  3. orders Respondent to pay a civil monetary penalty in the amount of eleven million dollars (\$11,000,000) plus 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 below in Section 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 Regulation 166.3, 17 C.F.R. § 166.3 (2018).
- B. Civil Monetary Penalty: Respondent shall pay a civil monetary penalty in the amount of eleven million dollars (\$11,000,000) (the "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 (2012).

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

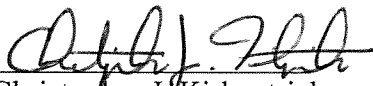
If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies 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 its 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: (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, 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 Consent 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. Other Undertakings: By way of remediation, Respondent shall undertake to enhance Respondent's supervision of the Desk to deter the announcement of false or misleading information by brokers on the Desk. Such remedial action shall include, but not be limited to: implementing direct personal supervision of the Desk; implementing new protocols to monitor trades brokered by the Desk; enhancing Respondent's review of voice-brokering by such means as increased random review; publish internal guidelines to its brokers on acceptable and prohibited voice-brokering conduct; seeking to ensure that customers understand the practice of voice-brokering and the information disclosed; and implementing annual and new-hire training and certification of brokers on the Desk.

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

By the Commission



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

Dated: September 13, 2019