UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In re Richard Usher,	:

ORDER

This matter is before the Commission on an administrative subpoena for documents (the "Subpoena") issued by an administrative law judge in *In re Richard Usher*, Dkt. No. AA-EC-2017-3 (OCC), an adjudicative proceeding pending before the Office of the Comptroller of the Currency ("OCC"). For the following reasons, and consistent with the Commission's interest in conserving agency resources, the Commission declines to authorize compliance with the Subpoena because the Subpoena is invalid and unduly burdensome.

BACKGROUND

On February 8, 2021, the ALJ presiding over the administrative proceedings *In re Richard Usher*, Dkt. No. AA-EC-2017-3 (OCC) issued the Subpoena at Usher's request and without any objection from OCC counsel. The Subpoena purports to be issued pursuant to "authority delegated by the Office of the Comptroller of the Currency" in accordance with 12 U.S.C. § 1818(n) and 12 C.F.R. § 19.26, and to "require" the Commission to produce records relating to a November 2014 Commission consent order (the "Consent Order") settling charges against JP Morgan Chase Bank NA ("JPMC"). The Consent Order found that foreign exchange ("FX") traders at JPMC coordinated trading with traders at other institutions in an attempt to manipulate FX benchmark rates, and to aid and abet other traders' attempted manipulation of

FX benchmark rates, in violation of Sections 6(c), 6(d) and 9(a)(2), of the Commodity Exchange Act, 7 U.S.C. §§ 9, 13b and 13(a)(2) (2012). The Consent Order held JPMC liable for the acts of its traders 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), and ordered JPMC to pay a $310 million civil monetary penalty.

As stated in the Subpoena, Usher demands the following four categories of records:

(1) All Documents concerning Communications from January 1, 2013 to November 11, 2014 relating to JPMorgan's November 11, 2014 entry into a consent order with the CFTC assessing, questioning, or disputing whether interactions between JPMorgan's foreign exchange spot traders and traders at other banks constituted "coordinated trading," whether such interactions amounted to an attempt to manipulate prices in violation of 7 U.S.C. §§ 9, 13b and 13(a)(2), and whether the CFTC had jurisdiction over the conduct in question.

(2) All Documents concerning Communications from January 1, 2013 to November 11, 2014 relating to the basis for the $310 million civil money penalty imposed on JPMorgan as part of the November 11, 2014 consent order between JPMorgan and the CFTC, including but not limited to Communications relating to whether and to what extent the amount of the penalty imposed was based on the conduct of Richard Usher, the conduct of other JPMorgan foreign exchange spot traders, and JPMorgan's alleged failure to implement adequate controls to prevent its traders from engaging in allegedly improper communications with traders at other banks.

(3) All Documents concerning Communications from January 1, 2013 to November 11, 2014 (including but not limited to submissions, letters, white papers, presentation materials, or notes from meetings or phone calls) to the CFTC by JPMorgan or its attorneys relating to the factual or legal basis for charges in the CFTC's investigation of foreign exchange spot trading by JPMorgan, the November 11, 2014 consent order between JPMorgan and the CFTC, or Richard Usher, a former foreign exchange spot trader at JPMorgan.

(4) All Documents relating to witness interviews conducted by the CFTC or any other entity during investigations of foreign exchange spot trading, including but not limited to notes or memoranda from witness interviews conducted by the CFTC or other government entities or financial institutions, and any CFTC-created notes from meetings with other entities regarding such interviews.

The CFTC's Legal Division initially received a copy of the Subpoena via email from OCC enforcement counsel on February 8, 2021. On February 17, 2021, the Legal Division sent Usher's counsel a letter stating, among other things, that the CFTC had not been properly served with the Subpoena and that the CFTC was not subject to compulsory process before the OCC because Congress has not expressly waived sovereign immunity for subpoenas of non-party U.S. agencies in OCC administrative proceedings.

On February 18, 2021, Usher's counsel served the Commission with the Subpoena and also submitted a letter to the Legal Division. The February 18, 2021 letter disputed the Legal Division's jurisdictional arguments and explained Usher's purported need for the subpoenaed records: To contest the OCC charges that Usher caused financial loss to JPMC in violation of 12 U.S.C. § 1818(e)(1)(B)(i); and "to test the OCC's theory that the [$310 million] settlement resulted, as a matter of legal causation, from Usher's conduct."

On March 4, 2021, the Legal Division responded to Usher's letter and acknowledged service of the Subpoena. The Legal Division objected to the Subpoena on the grounds that the ALJ lacked authority to issue it and because the OCC (and therefore the ALJ) has no power to issue compulsory process against the CFTC.[1] The Legal Division informed Usher that the Commission would give the Subpoena due consideration in accordance with Part 144 of the Commission's regulations. We now consider the Subpoena accordingly.

[1] Pursuant to OCC Regulation 19.26(b), "[a]ny person to whom a document subpoena is directed may file a motion to quash or modify such subpoena …" 12 C.F.R. § 19.26(b). The CFTC did not move to quash the subpoena in the OCC proceedings, because, for the reasons discussed in this order, the OCC has no authority or jurisdiction over the CFTC. The CFTC is accordingly not bound by the OCC's adjudicatory rules of procedure.

DISCUSSION

Part 144 of the Commission's Regulations were issued in accordance with the Housekeeping Act, 5 U.S.C. § 301, which authorizes federal agencies to prescribe regulations for the custody and use of its records. Such regulations are referred to as *Touhy* regulations after the Supreme Court case *Touhy v. Ragen*, 340 U.S. 462 (1951), which upheld the validity of regulations promulgated by federal agencies regarding the disclosure of agency information. The general purpose of *Touhy* regulations is "to conserve governmental resources where the United States is not a party to a suit, and to minimize governmental involvement in controversial matters unrelated to official business." *Agility Pub. Warehousing Co. K.S.C.P. v. U.S. Dep't of Def.*, 246 F. Supp. 3d 34, 41 (D.D.C. 2017) (quoting *Boron Oil Co. v. Downie*, 873 F.2d 67, 70 (4th Cir. 1989) (internal quotation marks omitted)).

Any party that seeks production of documents from a federal agency that has promulgated *Touhy* regulations must comply with those regulations. *Santini v. Herman*, 456 F. Supp. 2d 69, 71 (D.D.C. 2006) (citing *Touhy*, 340 U.S. at 462). An agency's decision about whether to comply with a third-party subpoena is a "policy decision about the best use of the agency's resources." *Agility Pub. Warehousing Co.*, 246 F. Supp. 3d at 42 (citing *Citizens to Preserve Overton Park*, 401 U.S. 402, 415 (1971)).

The CFTC has promulgated *Touhy* regulations at Part 144 of the Commission's regulations. These regulations are intended "to provide guidance for the internal operations of the Commission." 17 C.F.R. §144.0(c). Part 144 sets forth the procedures for disclosure "in response to a subpoena, order or other demand … of a court or other authority of any material contained in the files of the Commission, [or] of any information relating to material contained in the files of the Commission." 17 C.F.R. § 144.0(a). The regulations prohibit the release of any

material contained in the CFTC's files except as authorized by the Commission. 17 C.F.R. § 144.4(a). The Commission considers, as advised by its General Counsel, "any circumstances that might bear upon the desirability in the public interest of the disclosure of the information or production of documents." 17 C.F.R. § 144.2.

Being duly advised of the circumstances regarding the Subpoena, and after considering Usher's submissions in support of the Subpoena, the Commission denies the Subpoena because it is invalid and unduly burdensome.

A. The Subpoena is Invalid.

The Subpoena is invalid both because the ALJ did not have the authority to issue it and because the Congress has not waived sovereign immunity regarding subpoenas issued by ALJs in OCC administrative adjudications to non-party federal agencies.

1. The Subpoena is invalid on its face because the ALJ does not have authority to issue subpoenas to the CFTC.

The ALJ issued the subpoena pursuant to 12 U.S.C. § 1818(n) and OCC regulation 19.26, 12 C.F.R. § 19.26. We are unconvinced that 12 C.F.R. § 19.26 authorizes an ALJ to issue a subpoena against a federal agency, with certain possible narrow exceptions noted below that are inapplicable here. On the other hand, if the OCC's regulation did purport to grant the ALJ that authority, it would appear to be invalid because the OCC has no such authority to grant, and did not follow the required procedure for issuing the rule. Either way, the Subpoena is invalid.

First, we find that Section 1818(n) does not authorize the OCC to issue subpoenas to other federal agencies. Rather, it authorizes certain employees of banking agencies, including the OCC, to issue compulsory process to "any person." *See* 12 U.S.C. § 1818(n) ("[a]ny person" who fails or refuses to comply with or produce records in response to a Federal banking agency subpoena shall be guilty of a misdemeanor). Under the applicable statutory definition, *see* 1

U.S.C. § 1, the word "person" includes a variety of entities, but does "does not mention the federal government or its agencies." *Linder v. Calero-Portocarrero*, 251 F.3d 178, 181-82 (D.C. Cir. 2001) (holding that three federal agencies "need not comply" with a statutory subpoena, because the word "person" in the statute "did not include the federal government").[2] And Section 1818 states that an ALJ hearing "shall be conducted in accordance with the provisions of chapter 5 of Title 5," the Administrative Procedure Act. 12 U.S.C. § 1818(h)(1). The Administrative Procedure Act in turn confines an ALJ's subpoena power to those "authorized by law," "within [the agency's] powers," 5 U.S.C. § 556(c)(2), and issued against a "person," which in the APA, too, is defined to exclude government agencies, *id*. §§ 551(2).

Further, when Congress intends to authorize one federal agency to compel another to act, it does so expressly. *See, e.g.*, 5 U.S.C. § 1212(b)(5)(A)(iii) (authorizing the Office of Special Counsel to "require" an "agency to provide … any record or other information that relates to an investigation"); 5 U.S.C. § 1204(a)(2) (authorizing the Merit Systems Protection Board to "order any Federal agency or employee to comply with any order or decision issued by the Board"). "[W]hen Congress knows how to say something but chooses not to, its silence is controlling." *In re Guillen*, 972 F.3d 1221, 1226 (11th Cir. 2020) (internal quotation marks omitted). Because Section 1818 says nothing to suggest that the OCC has authority to compel action by the CFTC or any other agency, the OCC lacks that authority.

In that light, we are skeptical that when the OCC promulgated 12 C.F.R. § 19.26, it intended to claim such powers. It is true that the regulation defines "person" to include an "agency," *see* 12 C.F.R. § 19.3(m), but there is a narrower reading of "agency" that makes more

[2] In *Lindor*, the D.C. Circuit held that a federal agency could not assert sovereign immunity from a federal court subpoena, but as discussed *infra*, that issue is not presented here.

sense in light of the OCC's more limited authority under 12 U.S.C. § 1818(n). The OCC promulgated these regulations along with four other agencies as "Uniform Rules of Practice and Procedure." 56 Fed. Reg. 38024, 38024 (Aug. 9, 1991). In the OCC's Federal Register release, it defined "Agencies" to include only *those* five agencies. *Id.* Throughout the release, the OCC referred to each of *those* agencies individually as "agency." *See, e.g.*, *id.* (referring, for example, to "separate Local Rules applicable to each agency" and noting that "[e]ach agency is adopting substantially similar Uniform Rules"). By contrast, where the OCC referred to any other agency, it added modifiers. *See, e.g.*, *id.* at 38027 (referring to "a Federal financial institutions regulatory agency" or a "state regulatory agency"). The same is true where the OCC referred to fewer than all of the five agencies involved in the rulemaking. *Id.* at 38028 (referring to four of the five as "the Federal banking agencies" and to the fifth by name, "the NCUA"). We find it far more plausible that the agencies issuing the Uniform Rules intended to subject themselves to each other's administrative subpoenas, rather than to expand their own authority beyond what any statute provides.

This reading is bolstered by the fact that nowhere in the OCC's release is there any discussion of whether ALJs can or should be delegated the power to subpoena federal agencies and why. That raises another infirmity in Usher's subpoena: If the OCC *did* intend to authorize its ALJs to subpoena other federal agencies, despite not analyzing that issue at all, regulation 19.26 would appear to be invalid because it is arbitrary and capricious. The APA requires that an agency issuing a regulation "articulate a satisfactory explanation for its action." *State Farm*, 463 U.S. at 43. If the agency "entirely failed to consider an important aspect of the problem," the regulation is arbitrary and capricious and a court will strike it down. *Id.* Here, the only mention of the OCC's inclusion of the word "agency" in the definition of "person" came at the

proposal stage, and said only that "[t]he term 'person' [was] intended to be construed broadly, and encompasses an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization." 56 Fed. Reg. 27790-01. That description is no analysis at all and, in any event, statements in a notice of proposed rulemaking cannot by themselves justify a final agency action. *Cigar Ass'n of Am. v. FDA*, 964 F.3d 56, 63 (D.C. Cir. 2020). *See* 56 Fed. Reg. 38024-01. Many unique issues apply to subpoenas against federal agencies—including burdens on public resources and the OCC's very authority to issue one—but the OCC said nothing about any of them. What the OCC *did* say is that "[t]he Agencies" intended their discovery rules to "strike a balance" that recognized their *own* interest in "preserving limited resources." *Id.* at 38026. To say that without acknowledging the burdens of subjecting *other* agencies to discovery would again be arbitrary and capricious. We prefer not to assume that a sister agency committed these sorts of errors, or to act beyond the power granted them under Section 1818(n), and we believe the better reading of "agency" under Section 19.26 is the narrower one discussed above. But either way, the regulation does not empower the OCC's ALJ to compel the CFTC to turn over its records.

2. *The CFTC is not subject to the ALJ's jurisdiction because Congress has not expressly waived sovereign immunity for administrative subpoenas to non-party federal agencies in OCC proceedings.*

It is well settled that a proceeding cannot be brought against the United States without an express waiver of sovereign immunity by Congress. *United States v. Mitchell*, 445 U.S. 535, 538 (1980). Subpoenas issued to United States agencies are considered proceedings against the government because they seek to compel the government to act, and therefore such subpoenas require an express waiver of sovereign immunity in order to be valid. *E.P.A. v. Gen. Elec. Co.*, 197 F.3d 592, 595 (2d Cir. 1999) (citations omitted). A waiver of sovereign immunity cannot be

implied, and "must be unequivocally expressed in a statutory text." *Lane v. Pena*, 518 U.S. 187, 192 (1996). Agency regulations alone, absent an express waiver from Congress, are insufficient to waive sovereign immunity. *See Heller v. United States*, 776 F.2d 92, n. 7 (3d Cir. 1985) ("government regulations alone, without the express intent of Congress, cannot waive sovereign immunity.").

The CFTC is an independent federal agency, and Congress has not expressly waived sovereign immunity for subpoenas issued to federal agencies in OCC administrative adjudications. Accordingly, the CFTC is not subject to the ALJ's jurisdiction. Usher contends, nevertheless, that Congress has waived sovereign immunity for third-party administrative subpoenas through Section 702 of the APA. However, Section 702 contains no such waiver. While this provision has been construed to waive sovereign immunity for Fed. R. Civ. P. 45 subpoenas issued by federal courts, *see Linder*, 251 F.3d at 181, there is no authority for the proposition that Congress intended that waiver to extend to agency adjudicative proceedings. In that respect, there is no meaningful distinction between this case and the numerous decisions holding that sovereign immunity protects federal agencies against subpoenas issued by state courts. *See, e.g.*, *Houston Bus. Journal, Inc. v. Office of the Comptroller of the Currency*, 86 F.3d 1208, 1211 (D.C. Cir. 2007); *Boron Oil Co.*, 873 F.3d at 70-71.

Finally, Usher suggests that the "government" submitted to the ALJ's jurisdiction because the OCC did not object to the Subpoena and it placed the CFTC's $310 million civil

monetary penalty in issue.[3] However, the OCC cannot waive sovereign immunity for other federal agencies; only Congress can. Even an unequivocal statement by the OCC that it was waiving sovereign immunity on behalf of all federal agencies would not waive the CFTC's sovereign immunity. *See Goble v. Ward*, 628 F. App'x 692, 698 (11th Cir. 2015) (even if a letter from the SEC purported to unequivocally waive SEC's sovereign immunity, SEC would still retain immunity "because only Congress can waive an agency's sovereign immunity").

Because Congress has not expressly waived sovereign immunity with regard to administrative subpoenas to federal agencies in OCC adjudicative proceedings, the ALJ lacked jurisdiction to issue the Subpoena and it is therefore invalid.

B. The Subpoena is Otherwise Objectionable and is Unduly Burdensome.

In addition to being invalid, the Subpoena is objectionable because each category of documents sought is vague and overly broad. Moreover, as discussed below, the Subpoena is objectionable because it is designed to elicit internal Commission information that is protected by various privileges, and it otherwise seeks third-party records and information that Usher can seek from the respective third-parties with less burden. For these reasons, we deny the Subpoena.

[3] In addition, Usher asserts that because the "government" is pursuing Usher in the OCC action, "Constitutional due process attaches." Usher has not provided further detail as to his due process claim. In any event, a respondent in federal administrative proceedings has no constitutional right to prehearing discovery at all, *e.g. Silverman v. CFTC*, 549 F.2d 28, 33 (7th Cir. 1977)), and due process "does not mandate the availability of compulsory process," *Johnson v. United States*, 628 F.2d 187, 194 (D.C. Cir. 1980). *See also DeLong v. Hampton*, 422 F.2d 21, (3d Cir. 1970) (lack of subpoena power in administrative hearing does not deny due process); *Ubiotica v. Food and Drug Administration*, 427 F.2d 376, 381 (6th Cir. 1970) (where Congress chose not to provide subpoena power in FDA administrative proceedings statute, absence of subpoena power did not render statute unconstitutional under the due process clause).

1. The Subpoena seeks privileged information.

Although the Subpoena defines "document" as excluding privileged information, by its very nature, it seeks internal Commission records that are likely to be protected in whole or in part by multiple privileges. For example, Category 1 seeks documents concerning the CFTC's "assessing, questioning, or disputing" whether certain conduct constituted coordinated trading in violation of the CEA, and whether the CFTC had jurisdiction over the conduct. Category 2 seeks documents relating to the "basis for the $310 million civil monetary penalty imposed on JPMorgan," including those that might show to what extent the CFTC imposed the penalty based on Usher's conduct, as opposed to other factors. Finally, Category 4 seeks, among other things, staff notes related to investigative witness interviews and "CFTC-created notes from meetings with other entities regarding such interviews."

The attorney-client privilege protects from disclosure communications made for the purpose of receiving or providing legal advice. *In re Kellogg Brown & Root, Inc.*, 756 F.3d 754, 757 (D.C. Cir. 2014). The CFTC's internal analyses and recommendations regarding the legality of certain conduct, the CFTC's jurisdiction, potential charges and basis for penalties against JPMC, as sought by Categories 1 and 2, are subject to the Commission's attorney-client privilege. Further, any such documents, which are pre-decisional and reflect advisory opinions as to charging, litigation and settlement strategies, are also subject to the deliberative process privilege, which protects "documents and other materials that would reveal advisory opinions, recommendations, and deliberations comprising part of the process by which governmental decisions and policies are formulated." *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir.1997).

In addition, staff notes and mental impressions, memoranda, recommendations, and draft documents regarding the CFTC's investigation, litigation, charging and settlement

decisions and strategies as to JPMC are protected work product. *In re Sealed Case*, 146 F.3d 881, 884 (D.C. Cir. 1998) (the work-product privilege protects written materials prepared in anticipation of litigation, including private notes, memoranda, correspondence, among others, in the interest of protecting the adversary process). Work product protection extends to mental impressions, opinions, and legal theories, so that attorneys can "think, plan, [and] weigh facts and evidence." *Simmons, Inc. v. Bombardier, Inc.*, 221 F.R.D. 4, 7 (D.D.C. 2004) (citing *Coastal States Gas Corp. v. Dept. of Energy*, 617 F.2d 854, 864 (D.C. Cir.1980); *In re Sealed Case*, 121 F.3d at 737). Finally, any internal CFTC documents that would reveal general investigatory processes and techniques, or impair the ability of the CFTC to conduct future investigations, are protected by the CFTC's federal law enforcement investigative privilege, and would not be disclosed. *Singh v. S. Asian Soc'y of George Washington Univ.*, Civ. No. 06-574, 2007 WL 1556669, at *3 (D.D.C. May 24, 2007) (citing *United States v. Myerson*, 856 F.2d 481, 483–84 (2d Cir.1988)).

In light of the nature of the requests and the applicable privileges, compliance with the Subpoena will likely produce little, if any, non-privileged material from internal Commission records. At the same time, it will impose a heavy burden on Commission resources for the review of Commission files for responsive records, redaction of all privileged or protected information, and production of such redacted responsive records.

For these reasons, the Commission finds that compliance with the Subpoena's demand for internal CFTC records to be unduly burdensome.

2. The Subpoena demands third-party records that Usher can seek from the respective third-parties with less burden.

The Subpoena also seeks third-party documents and information provided to the CFTC. Category 3 requests, among other things, communications from JPMorgan or its attorneys,

including "submissions, letters, white papers, [and] presentations materials," related to Usher or the factual or legal basis for the CFTC's charges against JPMC and the Consent Order. In addition, Category 4 appears to seek, among other things, third-party documents relating to interviews conducted by "any entity." Usher can seek and, to the extent that he is entitled, obtain documents responsive to these requests from the respective third-parties. This will alleviate the burden on the CFTC to review its files for responsive third-party information, and to produce such records after providing third-party notice, as required by 7 U.S.C. § 12(f) (CFTC must provide 14-day notice to third-parties whose information is sought by a subpoena), which might itself then require the CFTC to manage any third-party objections to productions that arise.

Usher claims he needs CFTC documents in order to challenge the OCC's allegations regarding the cause of JPMC's loss suffered as a result of its settlement with the CFTC. However, as alleged by the OCC, the legal basis of the OCC's claims against Usher is: (1) that he engaged in unsafe or unsound practices in conducting the affairs of JPMC and/or breached his fiduciary duties to JPMC; (2) because of this misconduct, JPMC suffered a financial loss (related in-part to the CFTC settlement), or Usher received a financial gain; and (3) Usher's unsafe and unsound practices, and his breach of fiduciary duties involve personal dishonesty and/or demonstrate willful or continuing disregard for the safety and soundness of JPMC. *In re Richard Usher*, AA-EC-2017-3 (OCC), Dkt. N20-007, Amend. Notice of Charges, at 18. The CFTC's internal deliberations and assessments are irrelevant to these issues. Rather, the questions are whether Usher engaged in the alleged unsound practices involving personal dishonesty and breach of fiduciary duty, and whether JPMC's losses are attributable to this conduct. The latter question relates to why JPMC chose to settle charges with the CFTC (and, as alleged, other regulatory agencies), as opposed to any internal CFTC deliberations to which JPMC was never

privy. Usher fails to explain why he cannot mount a vigorous defense through party discovery requests to the OCC regarding the factual bases underlying its charges, or third-party discovery from JPMC regarding Usher's conduct and its decision to settle. While Usher implies that the CFTC is a participant in "the government's" pursuit against him, (Ex. 4 at 2), suggesting perhaps that the Subpoena to the CFTC is akin to party-discovery, this is incorrect. The CFTC is not involved in the OCC's enforcement action against Usher, except as the recipient of an invalid Subpoena. To the extent that Usher finds valid discovery in the OCC proceedings to be insufficient, he can seek—and is currently seeking—the same records through a Freedom of Information Act ("FOIA") request to the CFTC.[4]

In light of the burdens that the Subpoena imposes with regard to third-party documents and information, and because these documents can be sought, with less burden, directly from third parties, the Commission finds the Subpoena's demand for third-party documents to impose undue burden upon the Commission.

CONCLUSION

For the foregoing reasons, we find that the Subpoena is invalid and otherwise objectionable, and that compliance with the Subpoena is unduly burdensome. Accordingly, in the interest of efficient use and conservation of Commission resources, we deny the February 8, 2021 subpoena for documents issued to the CFTC in *In re Richard Usher*, Dkt. No. AA-EC-2017-3 (OCC).

IT IS SO ORDERED.

[4] On March 18, 2021, Usher filed a FOIA request with the CFTC seeking the same four categories of documents sought in the Subpoena. That request is being processed by the CFTC's FOIA office.

By the Commission (Acting Chairman BEHNAM and Commissioners QUINTENZ, STUMP, and BERKOVITZ).

Robert N. Sidman
Deputy Secretary of the Commission
Commodity Futures Trading Commission

Dated: April 12, 2021