

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

RECEIVED CFTC



Office of Proceedings
Proceedings Clerk

9:20 am, Oct 14, 2021

In the Matter of:

UBS AG,

Respondent.

CFTC Docket No. 22-03

**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 July 8, 2019 to December 23, 2019 (“Relevant Period”), UBS AG (“UBS AG” or “Respondent”) violated Section 4s(g)(1) of the Act, 7 U.S.C. § 6s(g)(1) (2018), and Commission Regulations (“Regulations”) 23.201(a)(1), 23.202(a)(1), and 23.203(b)(1), 17 C.F.R. §§ 23.201(a)(1), 23.202(a)(1), and 23.203(b)(1) (2020). 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.

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 (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.¹

¹ 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

In December 2019, UBS AG telephonically alerted the Commission's Division of Enforcement ("Division") and Market Participants Division ("MPD") of a potential recordkeeping violation related to its swap dealer voice recordings. This telephone call was followed by a February 21, 2020 letter entitled "UBS AG Swap Dealer Self-Reporting of Issues," in which UBS AG self-reported that it had come across a failure to comply with its recordkeeping requirements as a swap dealer. Due to an employee error, UBS AG only retained for one day certain voice recordings related to swaps activity. The Regulations, however, require that these voice recordings be retained for one year. UBS AG came across this failure when a technology team was unable to locate specific voice recordings it knew should have been in its retention systems. As a result of this failure, UBS AG lost voice recording files that were required to be maintained by the Regulations.

In accepting Respondent's offer, the Commission recognizes the self-reporting and substantial cooperation of UBS AG in connection with the Division's investigation of this matter. The Commission also acknowledges Respondent's representations concerning its remediation in connection with this matter. The Commission's recognition of Respondent's self-reporting, substantial cooperation, and appropriate remediation is further reflected in the form of a substantially reduced penalty.

B. RESPONDENT

UBS AG is a global banking and financial services company headquartered in Zurich and Basel, Switzerland, that provides investment banking, asset management, and wealth management services for private, corporate, and institutional clients worldwide. It has offices worldwide, including in the United States. UBS AG has been provisionally registered with the Commission as a swap dealer since December 31, 2012.

C. FACTS

1. Software Systems

During the Relevant Period, as part of its compliance with its recordkeeping obligations, UBS AG employed multiple systems to generate and retain swaps traders' voice recording files that related to the Respondent's regulated swaps activity. One vendor ("Vendor A") provided the trader turrets² and software ("System 1") UBS AG used to integrate data from the trader

² A trader turret is a communication device generally used by financial traders on their trading desks in place of a telephone. The trader turret is specifically designed for traders' high call volume and need to quickly place single-button outgoing calls. This was traditionally accomplished through use of multiple parallel phone lines but more recently with digital or internet protocol structures.

turrets with a voice recording system (“System 2”) provided by another vendor (“Vendor B”). UBS stored the voice recordings from the trader turrets (“voice recording files”) in storage systems, also provided by Vendor B (“Systems 3 and 4”).

As part of its functionality, System 1 transferred certain relevant metadata from the trader turret to System 2. This metadata was supposed to be transferred along with each corresponding voice recording file to long-term storage. Prior to and throughout the Relevant Period, for the Respondent’s U.S.-based trader turrets, UBS AG stored the majority of the metadata and corresponding voice recording files on Systems 3 and 4. To ensure all desired information about a voice recording file was retained, a trader turret had to first synchronize with System 1, which then sent corresponding metadata to the recording system.

After a voice recording was generated, it was stored along with the corresponding metadata, including the identity of the trader, on Systems 3 and 4. The voice recording files contained pre-execution swaps information – such as quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a swap – that the Regulations required the Respondent to retain.

When a voice recording was generated by System 2, it was assigned to a particular user group category. Voice recording files and metadata were retained in Systems 3 and 4 for a preset retention period. The retention period for a given voice recording file was dependent on the user group to which that voice recording file was assigned. Once a voice recording file reached the end of the preset retention period, it was deleted. UBS AG’s analysts responsible for maintenance of Systems 3 and 4 were capable of changing the designated user group for any group of voice recording files without any checks or approvals. To detect unintended changes to the retention periods for individual recorded users, UBS conducted a monthly control to check that the retention period in storage Systems 3 and 4 for each individual recorded user’s records aligned with the retention period designated for that recorded user in an internal tracking database. However, this control did not check the retention periods for recordings generated without being associated with an individual recorded user, which occurred due to the synchronization failure, as described below.

2. Synchronization Flaw

The trader turret required traders to log in with their personal login information. Once a trader logged in, the trader turret was assigned to that trader and downloaded the logged-in trader’s profile, which included the trader’s identity (i.e., metadata). The trader turret communicated this metadata to System 1 in order to transfer it to System 2’s recording software, which associated it with corresponding voice recording files.

There was a known flaw, however, with Vendor A’s system, which impacted the accurate retention of certain metadata. Sometimes, during a trader’s log-in, the trader turret failed to synchronize with System 1’s software. The failure of the synchronization resulted in certain metadata, e.g. the trader’s identity, not transferring to UBS’s voice recording system; however, it did not affect the creation of the voice recording files themselves.

This synchronization failure created a population of voice recording files which were not assigned to a particular trader. These unassigned voice recording files were categorized as “Trader 0” recordings. System 2 transferred these “Trader 0” voice recording files to Systems 3 and 4 for long-term storage.

The synchronization failure lasted until the problem was fixed by UBS AG’s technology center or the trader turret was reset. “Trader 0” recordings were periodically reviewed by the technology center but only to locate trader turrets that were not synchronizing with System 1 and needed to be reset.³ The retention period for the “Trader 0” user group’s voice recording file was set to five years; this exceeded the one-year retention period required by the Regulations for such oral communications related to swaps activity.

3. “Trader 0 Voice Recording File Deletion

On July 8, 2019, a UBS AG technology analyst who was responsible for maintenance of Systems 3 and 4 came across the population of “Trader 0” voice recording files while carrying out the analyst’s general duties. The description of these voice recording files included “Test TRID 0.” The analyst understood the word “Test” to mean that these “Trader 0” voice recording files were, in fact, test voice recording files that did not need to be retained. In an effort to create space in the storage systems, the analyst then re-designated the “Trader 0” voice recording files to the “unrecorded” user group. The “unrecorded” user group had a retention period of one day. Thus, the re-designation of “Trader 0” voice recording files resulted in resetting the retention period for the “Trader 0” voice recording files from five years to one day. As a result of this re-designation on July 8, 2019 and continuing through the Relevant Period, “Trader 0” voice recording files stored in Systems 3 and 4 were only retained for one day.

In December 2019, UBS AG inadvertently learned about the deletion of “Trader 0” audio files from its systems. UBS AG became aware of the deletions while it was searching for, but not finding, specific voice recording files that it knew should have been in its retention systems. Upon discovery of the erroneous deletions of recordings, UBS AG did an internal review to determine the universe of impacted voice recording files. This included a full review of its recording systems globally. UBS AG analyst’s error resulted in the deletion of over 1,000 hours, or roughly 2.76% of total U.S. recorded volume, during the period July 8, 2019 through December 23, 2019. The deleted files included voice recordings containing pre-execution swaps information such as quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of swaps, all of which are required by the Regulations to be retained.

*

*

*

UBS AG promptly self-reported this violation to Commission staff via a December 2019 telephone communication, followed by formally submitting a comprehensive written self-report in late February 2020. In its written self-report, UBS AG provided key, detailed information,

³ The “Trader 0” voice recordings generated while trader turrets were failing to synchronize with the voice recording systems were not reassigned to their corresponding traders as part of this routine review. Instead, these voice recordings remained stored with the “Trader 0” user group in Systems 3 and 4 until they were deleted at the end of their retention period.

including technical information about its voice and metadata recording and retention systems that forms the basis of this order. UBS AG also cooperated with the Division in its investigation by voluntarily responding to requests for information. UBS AG provided information and findings to the Division both in direct written responses to Division questions and via oral and written presentations. This coupled with its comprehensive and accurate self-report allowed the Division to expeditiously complete its investigation and conserved Commission resources.

Additionally, UBS AG has proactively engaged in remedial procedures, and represents it has implemented the following changes: requiring employees seeking to change a voice recording retention period to obtain approval by a review board through a written request; implementing measures to reduce the volume of “Trader 0” turret voice recordings, including by running daily reports each morning to identify and resolve synchronization failures triggering generation of “Trader 0” voice recordings; and incorporating checks of the “Trader 0” retention periods into its daily system health checks. UBS AG also represented that it has incorporated the “Trader 0” recording population into a monthly control to confirm that the retention period for this user group is in accordance with the Regulations.

III. LEGAL DISCUSSION

Section 4s(g)(1) of the Act requires swap dealers to keep daily trading and counterparty records. 7 U.S.C. § 6s(g)(1) (2018).

Regulation 23.201(a)(1), 17 C.F.R. § 23.201(a)(1) (2020), requires each swap dealer to keep full, complete, and systematic records, together with all pertinent data and memoranda of all its swaps activities including records of each transaction including all documents on which transaction information is originally recorded.

Regulation 23.202(a)(1), 17 C.F.R. § 23.202(a)(1) (2020), requires that each swap dealer make and keep pre-execution trade information, including, at a minimum, records of all oral and written communications . . . whether communicated by telephone, voicemail . . . or other digital or electronic media.

Regulations 23.203(b)(1), 17 C.F.R. § 23.203(b)(1) (2020), requires that records required to be kept pursuant to Part 23 of the Regulations, be kept in accordance with Regulation 1.31, 17 C.F.R. § 1.31 (2020). Regulation 1.31(b)(2), 17 C.F.R. § 1.31(b)(2), prescribes a one-year retention period. (“A records entity that is required to retain oral communications, shall keep regulatory records of oral communications for a period of not less than one year from the date of such communication.”).

As detailed above, UBS AG failed to keep required voice recording files containing oral communications related to regulated swap activity and pre-execution trade information during the Relevant Period, despite the one-year retention period required under Regulation 23.203(b)(2), 17 C.F.R. § 23.203(b)(2) (2020). These failures violated Section 4s(g)(1) of the Act and Regulations 23.201(a)(1), 23.202(a)(1) and 23.203(b)(1).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, UBS AG violated Section 4s(g)(1) of the Act, 7 U.S.C. § 6s(g)(1) (2018), and Regulations 23.201(a)(1), 23.202(a)(1), and 23.203(b)(1), 17 C.F.R. §§ 23.201(a)(1), 23.202(a)(1), and 23.203(b)(1) (2020).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 - 1. The filing and service of a complaint and notice of hearing;
 - 2. A hearing;
 - 3. All post-hearing procedures;
 - 4. Judicial review by any court;
 - 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 - 6. Any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (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 (2020), 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, §§ 201-53, 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 Section 4s(g)(1), 7 U.S.C § 6s(g)(1) (2018), and Regulations 23.201(a)(1), 23.202(a)(1), and 23.203(b)(1), 17 C.F.R. §§ 23.201(a)(1), 23.202(a)(1), and 23.203(b)(1) (2020);
 2. Orders Respondent to cease and desist from violating Section 4s(g)(1) and Regulations 23.201(a)(1), 23.202(a)(1), and 23.203(b)(1);
 3. Orders Respondent to pay a civil monetary penalty in the amount of five hundred thousand dollars (\$500,000), plus post-judgment interest;
 4. Orders Respondent 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. Respondent shall cease and desist from violating Section 4s(g)(1), 7 U.S.C § 6s(g)(1) (2018), and Regulations 23.201(a)(1), 23.202(a)(1), and 23.203(b)(1), 17 C.F.R. §§ 23.201(a)(1), 23.202(a)(1), and 23.203(b)(1) (2020).
- B. Respondent shall pay a civil monetary penalty in the amount of five hundred thousand dollars (\$500,000) (“CMP Obligation”). If the CMP Obligation is not paid immediately, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2018).

Respondent shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

CFTC
C/O ESC/AMK-326; HQ RM 265
6500 S. MacArthur Blvd.
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

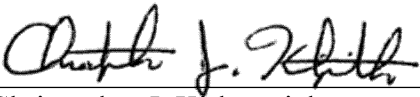
fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment 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 the 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. 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.



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

Dated: October 14, 2021