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UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

Office of  
Proceedings  
Proceedings Clerk

In the Matter of

UBS AG,

Respondent.

CFTC Docket No. 10-07

**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" or "CFTC") has reason to believe that UBS AG ("UBS"), has violated Section 4a(e) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 6a(e) (2006). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether UBS engaged in the violations as 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, UBS has submitted an Offer of Settlement ("Offer"); which the Commission has determined to accept. UBS acknowledges receipt of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Act, Making Findings and Imposing Remedial Sanctions ("Order"). UBS, without admitting or denying the findings of fact or conclusions of law herein, consents to the use of the findings contained in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.<sup>1</sup>

<sup>1</sup> UBS does not consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, as the sole basis for any other proceeding brought by the Commission other than a proceeding in bankruptcy or to enforce the terms of this Order. Nor does UBS consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, by any other party in any other proceeding.

### III.

The Commission finds the following:

#### A. SUMMARY

On more than one occasion during the period from in or about December 2006 through in or about March 2008 (the “relevant period”), UBS exceeded the New York Mercantile Exchange’s (“NYMEX”) position limits on certain NYMEX natural gas, heating oil and platinum futures contracts in violation of Section 4a(e) of the Act.<sup>2</sup>

#### B. RESPONDENT

**UBS AG** is a publicly traded Swiss corporation with shares traded on the SIX Swiss Exchange, the New York Stock Exchange and the Tokyo Stock Exchange. Its principal executive office is in Basel, Switzerland. In the United States, UBS provides financial services to private, corporate and institutional clients. UBS is a member of NYMEX and is not registered with the Commission.

#### C. FACTS

##### UBS Exceeded NYMEX’s Position Limits<sup>3</sup>

During the relevant period, on more than one occasion UBS exceeded the position limits fixed in NYMEX Rule 559. UBS violated this rule of NYMEX, a designated contract market, fixing limits on positions that may be held during the current delivery month or “spot” month under futures contracts. This rule and certain amendments, which were approved by the Commission, fix limits, set forth in the following table, for NYMEX’s Michigan Consolidated Gas Co. (MichCon) Natural Gas Basis Swap Futures Contract; Transcontinental Gas Pipeline Co. (Transco) Zone 4

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<sup>2</sup> During the relevant period, NYMEX had Commission-approved trading limits on Michigan Consolidated Gas Co. (MichCon) Natural Gas Basis Swap Futures Contract; Transcontinental Gas Pipeline Co. (Transco) Zone 4 Index Natural Gas Basis Swaps Futures Contract; New York Harbor No. 2 Heating Oil Futures Contracts; and Platinum Futures Contract as provided in NYMEX Rule 559.

<sup>3</sup> NYMEX is a registered entity, pursuant to Section 1a(29) of the Act, and a designated contract market pursuant to Section 5 of the Act.

Index Natural Gas Basis Swaps Futures Contract; New York Harbor No. 2 Heating Oil Futures Contract-s; and Platinum Futures Contract.

COMMODITY	POSITION LIMIT (current delivery month)
MichCon	500
Transco Zone 4	500
Heating Oil	1,000
Platinum	150

#### **D. LEGAL DISCUSSION**

##### **By Exceeding NYMEX Position Limits, UBS Violated Section 4a(e) of the Act**

During the relevant period, Section 4a(e) of the Act provided, in relevant part, that “[i]t shall be a violation of this Act for any person to violate any bylaw, rule, regulation or resolution of any contract market, derivatives transaction execution facility, or other board of trade licensed, designated, or registered by the Commission fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery or under options on such contracts or commodities, if such bylaw, rule, regulation or resolution has been approved by the Commission.”<sup>4</sup> The Commission approved the NYMEX rule fixing limits on positions of subject contracts that may be held, and, on more than one occasion, UBS violated this rule. By exceeding the limits fixed by this rule, UBS violated Section 4a(e) of the Act.<sup>5</sup>

#### **IV.**

##### **OFFER OF SETTLEMENT**

UBS has submitted an Offer in which it (A) acknowledges receipt and service of this Order; (B) admits the jurisdiction of the Commission with respect to all the matters set forth in this Order; and (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 claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; (7) any and all claims that it may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or Part 148 of the Commission’s Regulations, 17 C.F.R. §§ 148 *et seq.* (2008), relating to, or arising from, this proceeding; and (8) any and all claims that it may possess under the Small Business Regulatory Enforcement Act, Pub. L. No. 104-121, §§ 231-232,

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<sup>4</sup> Section 4a(e) of the Act was amended by the CFTC Reauthorization Act of 2008, enacted June 18, 2008.

<sup>5</sup> The Commission does not need to establish scienter to prove a violation of Section 4a(e). *CFTC v. Hunt*, 591 F.2d 1211 (7th Cir. 1979); *see also In re Saberi*, [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,031 (CFTC March 2, 2005).

110 Stat. 862 (1996), as amended by Pub. L. No. 110-28, 121 Stat. 112 (2007), relating to, or arising from, this proceeding.

UBS stipulates that the record basis on which this Order is entered shall consist solely of the findings in this Order to which UBS has consented. UBS consents to the Commission's issuance of this Order, which makes findings, as set forth above, and orders that: UBS and its successors and assigns cease and desist from violating Section 4a(e) of the Act; UBS pay a civil monetary penalty of \$130,000 within ten days of the date of entry of this Order; and UBS and its successors and assigns to each comply with the undertaking consented to in the Offer and set forth below in Part VI of this Order.

Upon consideration, the Commission has determined to accept UBS's Offer.

## V.

### FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that UBS violated Section 4a(e) of the Act, 7 U.S.C. § 6a(e) (2006).

## VI.

### ORDER

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

1. UBS and its successors and assigns shall cease and desist from violating Section 4a(e) of the Act, 7 U.S.C. § 6a(e) (2006).
2. UBS shall pay a civil monetary penalty in the amount of one hundred thirty thousand dollars (\$130,000) within ten (10) days of the date of the entry of this Order. UBS shall pay its civil monetary penalty 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 by other than electronic funds transfer, 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: Marie Bateman – AMZ-300  
DOT/FAA/MMAC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
Telephone 405-954-6569

If payment by electronic transfer is chosen, UBS shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions.

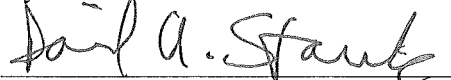
UBS shall accompany payment of its penalty with a cover letter that identifies itself and the name and docket number of this proceeding. UBS shall simultaneously transmit copies of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581; and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2)(2006), if UBS does not pay its civil monetary penalty in full within fifteen (15) days of the due date, it shall be prohibited automatically from the privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until it has shown to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date of the payment has been made; and;

3. UBS and its successors and assigns shall comply with the following undertaking set forth in its Offer:

Public Statements: Neither UBS nor any of its successors, assigns, employees, agents, or representatives shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in the Order, or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision shall affect UBS's (i) testimonial obligations, or (ii) right to take appropriate legal positions in other proceedings to which the Commission is not a party. UBS and its successors and assigns shall undertake all steps necessary to ensure that all of its employees, agents and representatives under its authority and/or actual or constructive control understand and comply with this undertaking.

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

By the Commission



David Stawick

Secretary of the Commission

Commodity Futures Trading Commission

Dated: February 24, 2010