

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65733 / November 10, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14620

In the Matter of

UBS Securities LLC,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against UBS Securities LLC (“Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

Summary

1. These proceedings arise out of practices engaged in by the securities lending desk of UBS Securities LLC (“UBS”) in providing and recording “locates” to its customers to enable the customers to execute short sales. The practices described herein have been in place at UBS since at least 2007.

2. Regulation SHO (“Reg SHO”) prohibits broker-dealers from accepting short sale orders in equity securities or effecting a short sale in an equity security for its own account unless the broker or dealer has borrowed the security or entered into a bona fide arrangement to borrow the security or has reasonable grounds to believe the security can be borrowed for delivery when due, and has documented compliance with this requirement. A “locate” represents a determination by a broker-dealer that it has borrowed or has entered into a bona fide arrangement to borrow particular securities, or has reasonable grounds to believe that particular securities can be borrowed for delivery when due. In anticipation of, or coincident to, placing short sale orders, customers routinely contact broker-dealers to request locates. To comply with Reg SHO in circumstances where a manual locate process was required, UBS’s securities lending desk created and maintained a record (a “locate log”) purporting to show the basis upon which UBS had granted locates to its customers.

3. Accordingly, whenever a lending desk employee (“lending desk trader”) approved a locate request, the lending desk trader recorded the particular source of the shares available to borrow on the UBS locate log, such as another financial institution that had shares available to lend to UBS. Specifically, each locate included either the name of an employee at the lender or an indication that the lending desk trader was relying on an electronic availability feed. Thus, UBS’s locate log appeared to distinguish between locates granted based on UBS contacting a lender’s employee to confirm availability of shares and locates granted based on an electronic availability feed that lenders typically broadcast simultaneously to many broker-dealers before the market opens each day. In practice, however, UBS securities lending desk traders routinely recorded the name of a lender’s employee even when no one at UBS had actually contacted the lender employee to confirm availability.

4. UBS’s locate documentation practices created an inaccurate record regarding the basis upon which locates had been granted and caused locates to be granted without UBS documenting a reasonable basis for locates. UBS’s locate documentation practices created a risk of locates being granted based on sources that could not be relied upon if shares were needed for UBS’s or another executing broker’s settlement obligations. Accordingly, as a result of its actions, UBS violated Section 17(a) of the Exchange Act and Rule 203(b) of Regulation SHO thereunder.

Respondent

5. Respondent UBS Securities LLC, headquartered in Stamford, Connecticut, is dually-registered with the Commission as a broker-dealer and investment advisor. In 2005, UBS consented to the Commission’s entry of an Order sanctioning it for violations of Exchange Act

Section 17(a) and Rule 17a-4 thereunder relating to its failure to preserve and timely produce certain emails.

Background

A. The UBS Securities Lending Desk

6. Although a large number of locate requests were handled by the Firm's auto-approval function, many inquiries were addressed manually. In determining whether to approve such locate requests received from UBS customers, UBS securities lending desk traders considered, among other things, whether they could reasonably expect to borrow the shares from other financial institutions when delivery was due. One potential source for information about shares available to borrow was electronic availability feeds sent to UBS by various institutions each day before the markets open. These electronic feeds typically identified the securities and quantities of each security that the institutions may have available to lend.

7. At times, market conditions and other factors may have made relying on electronic availability feeds to grant locate requests unreasonable. In these circumstances, UBS lending desk traders were trained to communicate to each other information they learned about the securities they handled, especially information about whether particular lenders had stopped lending or were lending on terms indicative of limited availability of shares to borrow. UBS expected these communications about limited availability to alert traders handling locate requests that they may need to confirm the availability of shares to borrow by contacting the lender directly in order to form a reasonable belief about the number of shares available.

B. The UBS "Locate Log"

8. UBS recorded every locate request received by its securities lending desk in a computerized system that generated what was referred to internally as an "ASAP report." The ASAP report, also called a "locate log," was a record created and maintained by UBS in order to fulfill its obligation under Reg SHO to document its compliance with the requirement that UBS either have borrowed a security or entered into a bona fide arrangement to borrow a security, or had reasonable grounds to believe that a security could be borrowed by the delivery date, before accepting a short sale order for a security.

9. UBS had written procedures in place that specified the information lending desk traders were required to record when granting locates toward fulfilling its Reg SHO obligations. The procedures required two key pieces of information. First, the trader was required to identify the name of a lender from which UBS could reasonably expect to borrow the security in question. And second, if the source was another financial institution, the trader was required to record the name of the contact at the lender or, if the trader relied on the electronic feed from the lender, then the trader was directed to enter "electronic feed."

10. Thus, on the face of the UBS locate log, each approved locate sourced to a potential lender appeared to represent an instance in which either (a) a lending desk trader had determined that a particular feed could reasonably be relied upon as a locate source; or (b) a lending desk trader had confirmed that the lender had shares available by contacting the lender employee identified in the log.

11. The locate log distinguished between locates based on a direct contact with a lender employee and locates based on an electronic feed to enable UBS to monitor whether its lending desk employees were satisfying their Reg SHO obligations by reviewing the grounds on which locates were granted for reasonableness under the circumstances and to provide a clear record for regulatory review and oversight of UBS's compliance with those same obligations.

C. UBS Violated Exchange Act Section 17(a) by Creating an Inaccurate Locate Log

12. In practice, UBS securities lending desk traders recorded locates sourced to employees of lenders even when nobody at UBS had actually contacted the lender employees to confirm the availability of shares to borrow. According to UBS lending desk supervisors and traders, a locate log entry reflecting a contact name at the lender could mean *either* that the lending desk trader directly contacted the lender to confirm the availability of shares to borrow *or* that the lending desk trader was relying on an electronic feed disseminated before the market opened.

13. The lending desk practice of recording locates sourced to lender employees whom it had never contacted was pervasive, extending to every security handled by the lending desk.

14. For example, thousands of locates were sourced to lender employees who were out of the office and could not have provided information to UBS on the availability of shares to borrow. Further, thousands of those locates were for securities that were Reg SHO threshold securities.¹ In addition, many locates were sourced to lender employees at times when the lenders were not lending the security. In some of these circumstances, other UBS securities lending desk traders were aware that the lender was not lending the security, and in all of these cases, UBS would have discovered that the lender was not lending the security if its lending desk traders had contacted the lender directly as the locate log indicated.

15. UBS knew it was the practice of its lending desk traders to record locates sourced to lender employees even when the lender had not been contacted to confirm availability, yet permitted that practice to continue.

16. UBS allowed lending desk traders to duplicate and reuse locate approval information from prior locates to document new locate approvals sourced to the same lender and the lending desk traders did so because it saved time in documenting locates. This practice further increased the potential for locates sourced to lender employees who had not actually confirmed the

¹ Rule 203(c)(6) of Reg SHO defines a "threshold security" as a security for which the aggregate number of fails to deliver at a registered clearing agency is 10,000 shares or more, and at least equal to .5% of the issue's total shares outstanding, for five consecutive settlement days.

availability of shares to borrow, and created a risk of locates being granted without UBS having reasonable grounds to believe the security could be borrowed.

17. By permitting a practice under which locate log entries sourced locates to lender employees regardless of whether the lending desk trader contacted the lender employee, UBS created a system of documentation from which it was not possible to tell the basis upon which the locates were actually granted.

18. Moreover, the misuse of lender employee names in documenting the basis for granting locates created an impression that the basis upon which those locates were granted was direct contact with the lender to confirm availability, even when that was not the case. In certain circumstances, it may not have been reasonable for UBS to rely on an electronic feed to grant locates, whereas contacting the lender directly to confirm the availability of shares would have been reasonable.

D. UBS's Practices Violated Reg SHO

19. As a result of UBS's practices in creating its locate log, UBS securities lending desk traders routinely documented inaccurately the basis upon which locates had been granted.

20. UBS's practices in documenting the basis for granting locates resulted in a locate log that suggested that UBS had acted reasonably in granting locates when that may not have been the case. Despite the notations in UBS's locate logs, locates may have been granted based on (i) electronic feeds on days when it would not have been a reasonable practice to do so or sourced to lenders who were not lending the particular security, including during periods of market stress when availability to borrow securities may have been constrained, and (ii) duplicated and reused locate approval information from prior locates to document new locate approvals sourced to the same lender.

21. As a result, in some circumstances, UBS's practices permitted lending desk traders to approve locates without accurately documenting reasonable grounds for the belief that shares could be borrowed by the delivery date.

22. Moreover, because UBS created a locate log that did not document accurately the basis on which locates were granted, UBS's locate log did not permit a determination of whether it had reasonable grounds to believe securities could be borrowed to satisfy its delivery obligations.

23. Although the issues discussed above concerning UBS's Reg SHO compliance persisted from at least 2007, the impact of its practices was mitigated by certain factors. First, some of the locates UBS granted were furnished to clients who did not execute short sales using the locates UBS granted or did so for share amounts smaller than the amounts for which approvals were granted. Second, some of the lenders may have had the ability to lend sufficient securities by the delivery date to allow UBS to meet its settlement obligations, notwithstanding the inaccurate documentation of the basis for granting the locates. Finally, UBS was generally able to meet its settlement obligations by borrowing stock from sources other than the lenders identified in its locate log.

Violations

24. As a result of the conduct described above, UBS willfully² violated Section 17(a) of the Exchange Act and Rule 203(b) of Regulation SHO thereunder. Rule 203(b) prohibits a broker or dealer from accepting a short sale order in an equity security or effecting a short sale in an equity security for its own account unless the broker or dealer has borrowed the security, entered into a bona fide arrangement to borrow the security or has reasonable grounds to believe that the security can be borrowed for delivery when due and has documented compliance with this requirement. Section 17(a) requires brokers and dealers, among others, to make, keep, and furnish to the Commission such records as the Commission proscribes by rule. Inherent in the record keeping requirement of Section 17(a) is a requirement that the records be accurate. *In the Matter of Prime Capital Servs., Inc.*, 2010 SEC LEXIS 2086 at *134 (Initial Decision June 25, 2010). As described above, UBS, by employing practices that allowed securities lending desk traders to source locates to lender employees even when the UBS trader did not contact the lender to confirm the availability of shares, failed to document reasonable grounds for granting locates in violation of Section 203(b) and the firm failed to make an accurate record of its basis for granting locates in violation of Section 17(a).

Undertakings

25. Respondent has undertaken to:

A. Retain, at Respondent's expense and within thirty (30) days of the issuance of this Order, a qualified independent consultant (the "Consultant") not unacceptable to the staff of the Division of Enforcement (the "Staff"). Respondent shall require the Consultant to conduct a comprehensive review of Respondent's Securities Lending Desk policies, procedures and practices with respect to granting locate requests and UBS's procedures to monitor compliance therewith, to satisfy its obligations under Section 17(a) of the Exchange Act and 203(b) of Reg SHO thereunder to (i) accept short sale orders for equity securities only if it has borrowed the securities or entered into a bona fide arrangement to borrow the securities or has reasonable grounds to believe that securities can be borrowed for delivery when due; and (ii) document compliance with Rule 203(b)(1).

B. Cooperate fully with the Consultant, including providing the Consultant with access to its files, books, records, and personnel as reasonably requested for the review, obtaining the cooperation of employees or other persons under UBS's control, and permitting the Consultant to engage such assistance (whether clerical, legal, technological, or of any other expert nature) as necessary to achieve the purposes of the retention.

² A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

C. Require the Consultant to complete its review and submit a written preliminary report (“Preliminary Report”) to UBS and Commission staff within ninety (90) days of the issuance of this Order. UBS shall require that the Preliminary Report address the issues described in paragraph A above, include a description of the review performed, the conclusions reached, recommendations for any changes in or improvements to UBS’s policies and procedures, and a procedure for implementing such recommended changes.

D. Within ninety (90) days of receipt of the Preliminary Report, adopt and implement all recommendations contained in the Preliminary Report; provided, however, that as to any recommendation that UBS considers to be, in whole or in part, unduly burdensome or impractical, UBS may submit in writing to the Consultant and Commission staff, within thirty (30) days of receiving the Preliminary Report, an alternative policy, practice, or procedure designed to achieve the same objective or purpose. Within forty-five (45) days of receiving the Preliminary Report, UBS and the Consultant shall attempt in good faith to reach an agreement relating to each recommendation that UBS considers to be unduly burdensome or impractical. Within fifteen (15) days after the discussion and evaluation by UBS and the Consultant, UBS shall require that the Consultant inform UBS and Commission staff of the Consultant’s final determination concerning any recommendation that UBS considers unduly burdensome or impractical, and UBS shall abide by the determinations of the Consultant and adopt and implement all recommendations within the 90-day time period set forth in this paragraph.

E. Within fourteen (14) days of UBS’s adoption of all of the recommendations that the Consultant deems appropriate, certify in writing to the Consultant and Commission staff that UBS has adopted and implemented all of the Consultant’s recommendations and that UBS has established policies, practices, and procedures consistent with its obligations under Rule 203(b) and Section 17(a).

F. Require that the Consultant review UBS’s revised policies, practices, and procedures for the six month period following implementation of the Consultant’s recommendations, and require that the Consultant submit a written final report (“Final Report”) to UBS and Commission staff within thirty (30) days after the one-year anniversary of the issuance of this Order. The Final Report shall (i) describe the review made of UBS’s revised policies, practices, and procedures; (ii) describe how UBS is implementing, enforcing, and auditing compliance with the policies, practices, and procedures; and (iii) provide an opinion of the Consultant concerning whether UBS is adequately implementing, enforcing, and auditing compliance with the policies, practices, and procedures.

G. Require the Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with UBS, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Consultant will require that any firm with which the Consultant is affiliated or of which the Consultant is a member, and any person engaged to assist the Consultant in performance of the Consultant’s duties under this

Order shall not, without prior written consent of Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with UBS, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

H. To ensure the independence of the Consultant, UBS shall not have the authority to terminate the Consultant without prior written approval of Commission staff and shall compensate the Consultant and persons engaged to assist the Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

I. Within fourteen (14) days after the one-year anniversary of the issuance of this Order, certify in writing to Commission staff that as of the one-year anniversary date UBS has continued to implement and enforce all of the Consultant's recommendations and has continued to maintain policies, practices, and procedures consistent with its obligations under Rule 203(b) and Section 17(a).

J. Certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Assistant Director Stephanie Shuler, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

26. For good cause shown, the Commission's staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

IV.

In view of the foregoing, the Commission deems it appropriate, and in the public interest, to impose the sanctions agreed to in Respondent UBS's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent UBS cease and desist from committing or causing any violations and any future violations of Section 17(a) the Exchange Act and Rule 203(b) of Regulation SHO thereunder.

B. Respondent UBS is censured.

C. Respondent UBS shall, within fifteen (15) days of the entry of this Order, pay a civil money penalty in the amount of \$8 million to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies UBS as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Stephanie Shuler, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, N.Y., N.Y. 10281.

D. Respondent shall comply with the undertakings enumerated in paragraph 25 above.

By the Commission.

Elizabeth M. Murphy
Secretary