

In anticipation of the institution of an administrative proceeding, Respondents have submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondents consent 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 acknowledge service of this Order.¹

II. FINDINGS

The Commission finds the following:

A. Summary

During the Relevant Period, Respondents’ employees communicated using unapproved methods. These written communications were sent and received by Respondents’ employees and included messages related to Respondents’ businesses as Commission registrants that were required to be maintained under Commission-mandated recordkeeping requirements. These written communications were not captured and preserved by Respondents. As a result, Respondents violated, as set forth below, Sections 4g, 4s(f)(1)(B), and 4s(g)(1) of the Act, 7 U.S.C. §§ 6g, 6s(f)(1)(B), 6s(g)(1), and Regulations 1.35, 23.201(a)(1), and 23.202(a)(1) and (b)(1), 17 C.F.R. §§ 1.35(a)(1)(i) and (iii), 23.201(a)(1), 23.202(a)(1), (b)(1) (2024). In addition, the use of unauthorized communication methods violated Respondents’ policies and procedures, which prohibited such communications. Respondents did not implement a diligent supervisory system to ensure compliance with Commission recordkeeping requirements and Respondents’ own policies and procedures, and therefore, Respondents failed to diligently supervise matters related to Respondents’ businesses as Commission registrants in violation of Section 4s(h)(1)(B) of the Act, 7 U.S.C. § 6s(h)(1)(B), and Regulations 23.602(a) and 166.3, 17 C.F.R. §§ 23.602(a), 166.3 (2024), as set forth below.

In accepting Respondents’ Offer, the Commission recognizes Respondents’ exemplary cooperation. The Commission’s recognition is reflected in a reduced penalty, with Respondents receiving the maximum cooperation mitigation credit toward the full monetary penalty appropriate for these violations.

B. Respondents

Banco Santander, S.A. is a financial services company with its headquarters in Madrid, Spain. BSSA has been registered with the Commission as a non-U.S. swap dealer since July 2013.

Santander US Capital Markets LLC is a Delaware limited liability company with its headquarters in New York, New York. SanCap is an indirect wholly owned subsidiary of BSSA. SanCap has been registered with the Commission as a futures commission merchant (“FCM”) since February 2023, having been established through the merger of Santander Investment

¹ Respondents consent 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 agree that they shall be taken as true and correct and given preclusive effect therein, without further proof. Respondents do 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. Respondents do 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.

Securities Inc. (“SIS”) and Amherst Pierpont Securities LLC (“APS”). SIS was registered with the Commission as an FCM from March 2008 until March 2023. APS was registered with the Commission as an introducing broker from January 2012 through May 2021.²

C. Facts

Although Respondents’ policies and procedures prohibited the use of unapproved communication methods, during the Relevant Period, Respondents’ employees engaged in written communications related to Respondents’ Commission-regulated businesses that were not monitored, captured, or preserved. Further, although no customer or market harm is known to have occurred as a result, Commission recordkeeping requirements were not met, and Respondents failed to diligently supervise their employees to ensure compliance.

1. Respondents’ Recordkeeping Failures

During the Relevant Period, Respondents’ policies and procedures prohibited employees from using unapproved communication methods, such as personal text messages, to engage in business-related communications. Additionally, Respondents provided annual training and regularly issued compliance bulletins regarding their communications policies.

Messages sent through Respondents’ approved communication methods were monitored, subject to review, and when appropriate, archived. However, messages sent using unapproved communication methods, including over personal text messages, were not monitored, subject to review, or archived.

A sampling analysis conducted by Respondents, which included the personal devices of approximately five percent of its U.S.-based associated persons (“APs”) over a six-month period in 2021, revealed that all of the sampled APs violated Respondents’ communications policies and procedures by using personal text messages to communicate with coworkers and/or market participants about business activities. The analysis further revealed that the communications of some of these sampled APs involved Respondents’ Commission-regulated businesses. Respondents acknowledge that these results are likely representative of the issue more broadly.

2. Exemplary Cooperation

Respondents cooperated with the Division of Enforcement (“Division”) throughout its investigation. Respondents voluntarily collected and reviewed messages retrieved from the personal devices of a sampling of Respondents’ APs and made presentations to Division staff regarding Respondents’ Commission-regulated businesses, their electronic communications compliance program, and the results of the sampling review.

As part of their cooperation efforts, Respondents have significantly completed remediation. Respondents undertook an internal review to identify and assess the scope of potential violative communications. Respondents represent that they have enhanced their policies and procedures, increased training concerning the use of unapproved communication

² References to “SanCap” herein include both SIS and APS, as appropriate, for the respective timeframes within the Relevant Period each was in existence.

methods, enhanced their surveillance efforts to mitigate the risk of employees engaging in communications using unapproved communication methods, including on personal devices, and have been implementing significant changes to the technology available to their personnel. Further, Respondents represent that an internal audit of Respondents' Commission-regulated U.S. businesses is being conducted to further review and assess Respondents' electronic communications compliance program, including their surveillance controls and processes.

III. LEGAL DISCUSSION

A. BSSA Failed to Keep Required Records in Violation of Sections 4s(f)(1)(B) and 4s(g)(1) of the Act and Regulations 23.201(a) and 23.202(a)(1) and (b)(1).

Section 4s(f)(1)(B) of the Act obligates a swap dealer to keep “books and records of all activities related to its business as a swap dealer . . . in such form and manner and for such period as may be prescribed by the Commission by rule or regulation.” 7 U.S.C. § 6s(f)(1)(B); *see also* Section 4s(g)(1) of the Act, 7 U.S.C. § 6s(g)(1) (requiring swap dealers to maintain daily trading records). Part 23 of the Regulations implement these recordkeeping requirements. 17 C.F.R. pt. 23 (2024).

Pursuant to Regulation 23.201(a)(1), a swap dealer is required to “keep full, complete, and systematic records, together with all pertinent data and memoranda, of all its swaps activities,” including “[r]ecords of each transaction, including all documents on which transaction information is originally recorded.” 17 C.F.R. § 23.201(a)(1) (2024). Further, Regulation 23.202(a)(1) and (b)(1) requires, among other things, that a swap dealer keep daily trading records of all swaps and related cash and forward transactions it executes, including, specifically, a record of all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that led to the execution of a swap transaction or the conclusion of a related cash or forward transactions. 17 C.F.R. § 23.202(a)(1), (b)(1).

During the Relevant Period, as a result of its employees' use of unapproved communication methods, BSSA violated Sections 4s(f)(1)(B) and 4s(g)(1) of the Act and Regulations 23.201(a)(1) and 23.202(a)(1) and (b)(1).

B. SanCap Failed to Keep Required Records in Violation of Section 4g of the Act and Regulation 1.35(a)(1)(i) and (iii).

Section 4g of the Act requires FCMs and other registrants to create and keep books and records pertaining to transactions and positions in commodities for future delivery and in any significant price discovery contract in such form and manner and for such period as may be required by the Commission. 7 U.S.C. § 6g (2024). Regulation 1.35(a)(1), 17 C.F.R. § 1.35(a)(1) (2024), sets forth some of the books and records that are required to be kept and maintained by FCMs. Specifically, an FCM must:

- (i) Keep full, complete, and systematic records . . . of all transactions relating to its business of dealing in commodity interests and related cash and forward transactions, which shall include all orders (filled, unfilled, or canceled), . . . and

all other records, which have been prepared in the course of its business of dealing in commodity interests and related cash or forward transactions . . . ;

* * *

(iii) Keep all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a transaction in a commodity interest, and in any related cash or forward transactions

During the Relevant Period, as a result of its employees' use of unapproved communication methods, SanCap violated Section 4g of the Act and Regulation 1.35(a)(1)(i) and (iii).

C. Respondents Failed to Diligently Supervise.

Regulation 166.3 states:

Each Commission registrant, except an associated person who has no supervisory duties, must diligently supervise the handling by its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) relating to its business as a Commission registrant.

17 C.F.R. § 166.3 (2024).

A violation of Regulation 166.3 is demonstrated by showing either that: (1) the registrant's supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *In the Matter of Murlas Commodities, Inc.*, CFTC No. 85-29, 1995 WL 523563, at *9 (Sept. 1, 1995) (consent order); *In re GNP Commodities, Inc.*, CFTC No. 89-1, 1992 WL 201158, at *17-19 (Aug. 11, 1992) (consent order) (providing that, even if an adequate supervisory system is in place, Regulation 166.3 can still be violated if the supervisory system is not diligently administered); *Sansom Refining Co. v. Drexel Burnham Lambert, Inc.*, CFTC No. 82-R448, 1990 WL 282783, at *11 (Feb. 16, 1990) (consent order) (noting that, under Regulation 166.3, registrants have a "duty to develop procedures for the detection and deterrence of possible wrongdoing by [their] agents" (internal quotation omitted)); *see also In re Rosenthal Collins Grp., LLC*, CFTC No. 12-18, 2012 WL 1242406, at *6 (Apr. 12, 2012) (consent order) (finding that respondent failed to perform supervisory duties diligently by not following its compliance procedures that were in place). A violation under Regulation 166.3 is an independent violation for which no underlying violation is necessary. *See In the Matter of Thomas Collins*, CFTC No. 94-13, 1997 WL 761927, at *10 (Dec. 10, 1997) (consent order). 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 diligently supervise. *In the Matter of Paragon Futures Ass'n*, CFTC No. 88-18, 1992 WL 74261, at *14 (April 1, 1992) (consent order) ("The focus of any proceeding to

determine whether Rule 166.3 has been violated will be on whether [a] review [has] occurred and, if it did, whether it was ‘diligent.’”).

Section 4s(h)(1)(B) of the Act, requires “diligent supervision of the business of the registered swap dealer.” 7 U.S.C. § 6s(h)(1)(B). The Regulations require that each swap dealer “establish and maintain a system to supervise, and shall diligently supervise, all activities relating to its business performed by its partners, members, officers, employees, and agents (or persons occupying a similar status or performing a similar function).” Regulation 23.602(a), 17 C.F.R. § 23.602(a) (2024). The operative language of Regulation 23.602(a) is similar to the language of the Commission’s longstanding supervision regulation for futures and options, Regulation 166.3, 17 C.F.R. § 166.3 (2024). *In re Commerzbank AG*, CFTC No. 1903, 2018 WL 5921385, at *10-11 (Nov. 8, 2018) (consent order) (noting textual similarities between Regulation 23.602 and Regulation 166.3 and applying case law concerning Regulation 166.3).

During the Relevant Period, SanCap failed to supervise its FCM activities diligently, and BSSA failed to supervise its swap dealer business activities diligently. Respondents failed to maintain adequate supervisory systems to ensure that their employees complied with Commission recordkeeping requirements and Respondents’ policies and procedures that prohibited business-related communications on unapproved communication methods. Respondents’ failures to diligently supervise are demonstrated by their failure to keep Commission-required records and to detect violations of their policies and procedures. Accordingly, SanCap failed to supervise diligently its officers, employees, and agents in violation of Regulation 166.3; and BSSA failed to supervise diligently its officers, employees, and agents, in violation of Section 4s(h)(1)(B) of the Act and Regulation 23.602(a).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, BSSA violated Sections 4s(f)(1)(B), 4s(g)(1), and 4s(h)(1)(B) of the Act, 7 U.S.C. §§ 6s(f)(1)(B), 6s(g)(1), 6s(h)(1)(B), and Regulations 23.201(a)(1), 23.202(a)(1) and (b)(1), and 23.602(a), 17 C.F.R. §§ 23.201(a)(1), 23.202(a)(1), (b)(1), 23.602(a) (2024); and SanCap violated Section 4g of the Act, 7 U.S.C. § 6g, and Regulations 1.35(a)(1)(i) and (iii) and 166.3, 17 C.F.R. §§ 1.35(a)(1)(i),(iii), 166.3 (2024).

V. OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they:

- A. Consent to the resolution of this matter in an administrative proceeding;
- B. Acknowledge service of this Order;
- C. Admit 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;
- D. Waive:

1. The filing and service of a complaint and notice of hearing;
 2. A hearing;
 3. All post-hearing procedures;
 4. Any and all rights or defenses that Respondents have or might have for the matter to be adjudicated in a federal district court in the first instance, including any associated right to a jury trial;
 5. Judicial review by any court;
 6. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 7. Any and all claims that Respondents may possess under the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2024), relating to, or arising from, this proceeding;
 8. Any and all claims that Respondents 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
 9. 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;
- E. Agree that Respondents are not the prevailing party in this action for purposes of the waiver of any and all rights under the Equal Access to Justice Act specified in Paragraph D.7 above;
- F. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer;
- G. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that BSSA violated Sections 4s(f)(1)(B), 4s(g)(1), and 4s(h)(1)(B) of the Act, 7 U.S.C. §§ 6s(f)(1)(B), 6s(g)(1), , 6s(h)(1)(B), and Regulations 23.201(a)(1), 23.202(a)(1) and (b)(1), and 23.602(a), 17 C.F.R. §§ 23.201(a)(1), 23.202(a)(1), (b)(1), 23.602(a) (2024); and SanCap violated Section 4g of the Act, 7 U.S.C. § 6g, and Regulations 1.35(a)(1)(i) and (iii), and 166.3, 17 C.F.R. §§ 1.35(a)(1)(i) and (iii), 166.3 (2024);
 2. Orders BSSA to cease and desist from violating Sections 4s(f)(1)(B), 4s(g)(1) , and 4s(h)(1)(B) of the Act, and Regulations 23.201(a)(1), 23.202(a)(1) and (b)(1),

and 23.602(a); and SanCap to cease and desist from violating Section 4g of the Act and Regulations 1.35(a)(1)(i) and (iii) and 166.3;

3. Orders Respondents to pay, jointly and severally, a civil monetary penalty in the amount of five hundred thousand dollars (\$500,000), plus post-judgment interest within fourteen (14) calendar days of the date of entry of this Order; and
 4. Orders Respondents and their 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.
- H. Represent that Respondents have enhanced their policies and procedures, increased training concerning the use of unapproved communication methods, enhanced their surveillance efforts to mitigate the risk of employees engaging in communications using unapproved communication methods, including on personal devices, and began implementing significant changes to the technology available to their personnel.

Upon consideration, the Commission has determined to accept the Offer.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. BSSA and its successors and assigns shall cease and desist from violating Sections 4s(f)(1)(B), 4s(g)(1), and 4s(h)(1)(B) of the Act, 7 U.S.C. §§ 6s(f)(1)(B), 6s(g)(1), 6s(h)(1)(B), and Regulations 23.201(a)(1), 23.202(a)(1) and (b)(1), and 23.602(a), 17 C.F.R. §§ 23.201(a), 23.202(a)(1), (b)(1), 23.602(a) (2024); and SanCap and its successors and assigns shall cease and desist from violating Section 4g of the Act, 7 U.S.C. § 6g, and Regulations 1.35(a)(1)(i) and (iii), and 166.3, 17 C.F.R. §§ 1.35(a)(1)(i), (iii), 166.3 (2024).
- B. Respondents shall pay, jointly and severally, a civil monetary penalty in the amount of five hundred thousand dollars (\$500,000) (“CMP Obligation”), within fourteen (14) calendar days of the date of the entry of this Order. If the CMP Obligation is not paid in full within fourteen (14) calendar 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.

Respondents 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
6500 S. MacArthur Blvd.
HQ Room 266

Oklahoma City, OK 73169
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondents shall contact the Federal Aviation Administration at the above email address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent(s) and the name and docket number of this proceeding. The paying Respondent(s) 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, or such other address or recipient as instructed in writing by the Commission.

- C. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondents agree that neither they nor any of their successors and assigns, agents or employees under their 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 Respondents': (1) testimonial obligations; or (2) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall comply with this agreement and shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.
 2. Undertakings: Respondents shall (1) cause an internal audit of each of their Commission-regulated businesses in the United States to be completed within 270 days to review and assess Respondents' electronic communications compliance program with respect to the U.S.-based associated persons of their Commission-regulated businesses, including surveillance controls and processes; and (2) promptly implement each proposed recommendation arising from such internal audit related to the violations that are the subject of this Order, or shall otherwise promptly address any issues identified during such internal audit to ensure remediation and/or compliance with the Act and Regulations.
 3. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission of any partial payment of the CMP Obligation shall not be deemed a waiver of their 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 Respondents satisfy in full the CMP Obligation as set forth in this Order, Respondents shall provide written notice to

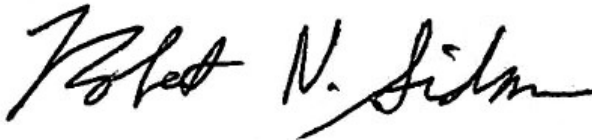
the Commission by certified mail of any change to their telephone numbers and mailing addresses within ten (10) calendar days of the change.

5. Notices to Creditors: Until such time as Respondents satisfy in full the CMP Obligation, upon the commencement by or against any Respondent of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of any Respondent's debts, all notices to creditors required to be furnished to the Commission under Title 11 of the United States Code or other applicable law with respect to such insolvency, receivership, bankruptcy, or other proceedings, shall be sent to the address below, or such other address or recipient as instructed in writing by the Commission:

Secretary of the Commission
Office of the General Counsel
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington, DC 20581

The provisions of this Order shall be effective as of this date.

By the Commission.



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

Dated: September 4, 2025