

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

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**In the Matter of:**

**UBS AG,**

**Respondent.**

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) **CFTC Docket No. 18-07**  
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**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 UBS AG (“UBS AG” or “Respondent”) violated the Commodity Exchange Act (the “Act” or “CEA”) and Commission Regulations (“Regulations”). 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”) that 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.<sup>1</sup>

<sup>1</sup> 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 agree 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, 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**

From January 2008 and continuing through at least December 2013 (the “Relevant Period”), UBS, by and through the acts of certain precious metals traders on the spot desk, attempted to manipulate the price of precious metals futures contracts by utilizing a variety of manual spoofing techniques. On numerous occasions throughout the Relevant Period, a number of UBS precious metals traders located in and outside the United States (collectively, the “Traders”), placed orders to buy or sell precious metals futures contracts, including gold and silver (“precious metals”) with the intent to cancel the orders before execution. By and through the acts of these Traders, UBS engaged in unlawful spoofing.

On those occasions, UBS, by and through the acts of the Traders, intended to induce other market participants into buying and selling precious metals futures contracts. In engaging in the unlawful spoofing conduct, UBS, by and through the acts of the Traders, also intended to manipulate the prices of the precious metals futures contracts. UBS, by and through the acts of the Traders, sought to induce other market participants to fill the resting orders placed by the Traders at UBS on the opposite side of the market from the orders that they placed with the intent to cancel before execution.

Separately, on certain other occasions between December 2009 through February 2012, UBS, by and through the acts of one of the Traders, placed orders and executed trades with the intent of manipulating the price of precious metals futures contracts for the purpose of triggering customers’ stop-loss orders.<sup>2</sup> This UBS trader coordinated his trading with another precious metals trader at another large financial institution (“Financial Institution 1”). On those occasions, intentionally triggering stop-loss orders would have allowed the UBS trader to buy precious metals futures contracts at artificially low prices or sell precious metals futures contracts at artificially high prices, for the benefit of his proprietary trading.

\* \* \* \* \*

In accepting the Offer of Settlement, the Commission recognizes UBS’s self-reporting and cooperation during the Division of Enforcement’s (“Division”) investigation of this matter, which is explained in more detail below. The Commission notes that UBS’s self-reporting, cooperation and remediation, are being recognized in the form of a substantially reduced civil monetary penalty.

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<sup>2</sup> A stop-loss order, or stop order, is an order that becomes a market order when a particular price level is reached. A sell stop is placed below the market; a buy stop is placed above the market.

## B. RESPONDENT

**UBS AG** (“UBS”) is a Swiss 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 operations in over fifty countries, including the United States.

## C. FACTS

During the Relevant Period, UBS was engaged in precious metals trading, which included making markets and engaging in proprietary trading in, among other things, precious metals spot and futures markets. As part of UBS’s business, Traders placed orders and entered into transactions for precious metals futures contracts traded on the Commodity Exchange, Inc. (“COMEX”), a futures exchange and designated contract market which is owned and operated by CME Group, Inc. (“CME”). UBS, by and through its Traders, traded precious metals futures contracts on behalf of the bank.

### 1. Spoofing and Attempted Manipulation

UBS, by and through the acts of the Traders, placed bids or offers on COMEX with the intent to cancel before execution, thus attempting to manipulate the price of precious metals futures contracts by utilizing a variety of manual spoofing techniques.

Generally, the Traders placed relatively large bids or offers in the futures market with the intent to cancel before execution (the “spoofer orders”) after another smaller bid or offer (the “resting order”) was placed on the opposite side of the same market. The Traders placed their spoof orders with the intent to create the false appearance of market depth, which the Traders believed and intended to create the impression of greater buying or selling interest than would have existed otherwise. The Traders placed such spoof orders with the intent to induce other market participants to fill their resting orders on the opposite side of the market from their spoof orders. In engaging in the spoofing conduct, the Traders also intended to manipulate the price of the relevant futures contract. Thereafter, the Traders cancelled the spoof orders after the resting orders were filled or when there was too great a risk of the spoof orders being executed.

During the Relevant Period, the Traders also discussed their efforts to spoof and attempts to manipulate the price of precious metals futures contracts in internal and external chats and electronic messages, as shown in the examples below.

On January 25, 2008, a UBS trader, Trader A, discussed trading activity with a trader, Trader B, who was employed by another large financial institution (“Financial Institution 1”). Trader A wrote: “hahaah”, to which Trader B responded: “*u [mu]st have [a]bout gazillions ... and u spoof the sell.*” Trader A wrote: “we good ain[']t we”, to which Trader B responded: “not very friendly.” Trader A wrote further: “we never are ... u want a fr[ien]d ... get a dog ... ahahahah.” (Emphasis added.)

On May 13, 2008, another UBS trader, Trader C, discussed trading activity with a trader employed by Financial Institution 1, Trader D. Trader D wrote: “TKU [thank you]

SERG[E]ANT SPOOF ... [YO]UR NEW NAME [Trader C.]” Trader C responded: “**HAHA NEVER SPOFF [sic] ... SPOOF UNLESS I[M] F...**” Trader D responded: “**HAHAHAH YEA ... THEN I[M] F....**” (Emphases added.)

Similarly, on November 27, 2009, Trader A and another trader, Trader E, who was employed by another large financial institution (“Financial Institution 2”) discussed trading activity. Trader A stated in a chat: “**btw the silver i bought the other day was a bit of a spoof too ... we are all big boys aren[']t we.**” Trader E responded: “you mean t[he] ““cheapies”” you got from me? ... bastard.” Trader A wrote further: “**hahaha...the spoof wasn[']t designed just for [you].**” Trader E wrote: “and you hit a bid.” Trader A responded: “that is nasty ... nono just pushed a bit then called out ... [c]an[']t be too obvious.” (Emphases added.)

In another example, on April 30, 2010, another UBS trader, Trader F discussed trading activity with another UBS trader, Trader G. Trader F wrote: “**u gotta be quick with spoofs cause everyone else knows the trick too ... except for smaller shops ... and algos of course.**” Trader F wrote further: “**u know i use[d] to do that is Stamford so i can get filled ... i’d be short 10k, show a bid for 35 lots ... mkt chases it ... i shift it lower ... and lower.**” (Emphases added.)

In another example, on August 2, 2010, Trader F was discussed trading activity with another UBS trader. Trader F wrote: “**u know when u were gone i did the regular bid/offer thing to spoof ... i got lifted twice haha ... think that trick is slowly starting to catch up.**” Trader F wrote further: “**sometimes ... but when i see stuff like that in the futures i been smacking it ... last time me and [Financial Institution 1] were doing that, worked in our favor.**” (Emphases added.)

In a July 19, 2011 chat, Trader F discussed trading activity with another trader, Trader H, who was employed by Financial Institution 1 in Singapore. Trader F wrote: “u are short, u want me to ram up gold? ... haha.” Trader H at Financial Institution 1 responded, “haha ... yes.” Trader F wrote further: “**just sit on the bid ... let me spoof it for u ... don[']t pay me on the futures.**” (Emphasis added.)

As reflected in these communications and other evidence, the UBS Traders engaged in spoofing and attempted to manipulate the precious metals futures markets.

## **2. Attempted Manipulation Relating to Stop Loss Orders**

On certain other occasions, between December 2009 through February 2012, one UBS trader, Trader F, attempted to manipulate the price of precious metals futures contracts in a manner that could trigger customer stop-loss orders in the market in order to obtain a profit. Trader F coordinated this trading with Trader H at Financial Institution 1.

On certain occasions, a customer had a stop-loss order placed through UBS, and Trader F coordinated with Trader H at Financial Institution 1 to place orders and execute trades in an attempt to push the price up or down, as needed, in the precious metals futures markets in an attempt to trigger the customer’s stop-loss order. On other occasions, Trader F would communicate with Trader H at Financial Institution 1 to determine the level in the market that customer stop-loss orders were resting at Financial Institution 1, and would coordinate their

precious metals futures trading also for the purpose of triggering the customer's stop-loss orders. Trader F engaged in this conduct intending to manipulate the prices of the precious metals futures contracts. Trader F executed trades with the understanding that his orders and trades had the ability to affect or influence prices. Trader F sought to benefit from the attempted manipulation by buying or selling futures contracts at prices that were artificially high or low.

Trader F and Trader H at Financial Institution 1 regularly discussed their attempts to manipulate through the stop loss manipulation strategies. Below are several examples of such chats.

On September 3, 2010, Trader F discussed trading to trigger stop loss orders with Trader H at Financial Institution 1: "...**when u push for stops u can[']t wait for dip, u gotta hold the bid and slowly push it up.**" Trader H responded: "haha true ... ok will see how the master does it." (Emphasis added.)

On November 18, 2010, Trader H at Financial Institution 1 told Trader F, "**[I] have chunky stop at 27.35 ... keep to urself.**" Trader F told Trader H "**go get that chunky monkey,**" to which Trader H responded, "**i am,**" and asked Trader F "**u wanna come on boar[d]?**" Trader F agreed and wrote, "**I'll get a 40 print for you.**" Trader H responded by calling them "**the hunt brothers.**" In response, Trader F wrote, "**chill man, they went to jail.**" (Emphases added.)

In another example, on January 7, 2011, Trader H at Financial Institution 1 asked Trader F, via a chat, about the level in the market at which customer stop loss orders were resting. Trader H asked "where are ur stops ... i can hunt with u." A few minutes later, Trader F asked Trader H "**yo can u help me push silver down?... im stuck with this stop damnit ... need a 72 print.**" When the market reached the stop level that they were seeking, Trader H told Trader F "there u go." After the trading sequence, Trader H wrote to Trader F "**i practice my hammer well right,**" to which Trader F commented that "**i just need a 72 print haha, u really butched it.**" (Emphases added.)

On January 19, 2011, Trader F told Trader H at Financial Institution 1 that he intends to get a "43 print" in platinum and tells him to "go long the plat[inum]." Trader H responded "loaded up some," and bought platinum futures contracts. Trader H then told Trader F, "**i help u print it.**" A few minutes later, Trader F wrote, "get ready," and Trader H responded "**let me know ... when to let the proton cannon loose.**" Shortly thereafter, Trader F wrote, "steady ... steady ... ok lets go." Trader H then bought more platinum futures contracts and wrote "**that was for the print ... can sell u back.**"(Emphases added.)

On March 29, 2011, Trader F asked Trader H at Financial Institution 1 for assistance in the gold futures market, asking Trader H to "**push it up**" because Trader F "**need[ed] a print.**" Trader F then told Trader H that he "**got it**" [i.e., the print]. A few minutes later, Trader F offered to sell Trader H gold futures contracts at an advantageous price "**cause u helped me for the print.**" (Emphases added.)

On August 11, 2011, Trader F and Trader H at Financial Institution 1 were discussing coordination of stop loss manipulation and Trader H wrote "the 1 lot offer ... is so powerful ... i

love it.” Trader F responded, “*it depends what kinda mkt ... sometimes u use muscle ... sometimes u use blade ... this is blade ... but then two guys doing it like this together is small muscle and blade.*” Trader H responded, “*yeah ... dude ... i like it ... double dragon.*” (Emphases added.)

As reflected in these communications and other evidence, Trader F at UBS on occasion colluded with and coordinated his trading with Trader H at Financial Institution 1, in an attempt to manipulate the precious metals futures markets.

### **3. UBS’s Self-Reporting, Cooperation and Remediation**

During the course of an internal investigation, UBS discovered potential misconduct, of which the Division was previously unaware. After discovering that misconduct, UBS promptly self-reported the misconduct to the Division and continued its internal investigation.

During its investigation, UBS, among other things, notified the Division of potential misconduct as it uncovered it and provided the Division timely updates on its internal investigation on a rolling basis; disclosed to the Division pertinent facts relevant to that misconduct, including facts related to involvement of individuals; identified specific documents in its productions that were particularly relevant to the misconduct at issue, and provided the Division information relating to the provenance of the documents.

UBS also proactively worked to remediate and enhance its compliance systems and policies related to spoofing in precious metals futures contracts, and futures contracts generally.

Due to UBS’s self-reporting, cooperation, and remediation, the civil monetary penalty imposed by the Commission has been substantially reduced from the otherwise applicable penalty.

## **III.**

### **LEGAL DISCUSSION**

#### **A. Attempted Manipulation of the Price of Precious Metals Futures Contracts, in Violation of Section 9(a)(2) of the Act; Sections 6(c) and 6(d) of the Act (for Conduct Occurring Prior to August 15, 2011); Sections 6(c)(1), 6(c)(3) and 6(d) of the Act and Regulations 180.1 and 180.2 (for Conduct Occurring On or After August 15, 2011)**

Together, Sections 6(c),<sup>3</sup> 6(d) and 9(a)(2) of the Act prohibit acts of manipulation and attempted manipulation. 7 U.S.C. §§ 9, 13b, 13(a)(2) (2012). Section 9(a)(2) of the Act makes it unlawful for “[a]ny person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.” 7 U.S.C. § 13(a)(2) (2012).

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<sup>3</sup> Section 6(c) was amended effective August 15, 2011.

For conduct prior to August 15, 2011, Section 6(c) and (d) of the Act authorizes the Commission to serve a complaint and provide for the imposition of, among other things, civil monetary penalties and cease and desist orders if the Commission “has reason to believe that any person . . . has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, . . . or otherwise is violating or has violated any of the provisions of [the] Act.” 7 U.S.C. §§ 9, 13b (2006).

For conduct occurring on or after August 15, 2011, the Commission is authorized to serve a complaint and impose penalties and cease and desist orders with regard to manipulation and attempted manipulation in violation of the broader amended provisions of Sections 6(c)(1) and 6(c)(3) of the Act, 7 U.S.C. § 9(1), (3) (2012), and the Regulations implementing those provisions. Section 6(c)(1) of the Act prohibits the use or attempted use of any manipulative device in connection with any swap or contract of sale of any commodity in interstate commerce, or for future delivery, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a)(1), 17 C.F.R. § 180.1(a)(1) (2017), makes it “unlawful . . . , directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to . . . (1) [u]se . . . or attempt to use . . . any manipulative device, scheme or artifice to defraud . . . .” Section 6(c)(3) of the Act prohibits the manipulation or attempted manipulation of the price of any commodity in interstate commerce, 7 U.S.C. § 9(3) (2012), and Regulation 180.2, 17 C.F.R. § 180.2 (2017), makes it “unlawful . . . directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.”

As described above, UBS AG, by and through the acts of the Traders, attempted to manipulate the price of precious metals futures contracts by utilizing a variety of manual spoofing techniques, in violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2012); Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9, 13b (2006), for conduct occurring prior to August 15, 2011; and Sections 6(c)(1), 6(c)(3) and 6(d) of the Act, 7 U.S.C. §§ 9(1), 9(3), 13b (2012), and Regulations 180.1 and 180.2, 17 C.F.R. §§ 180.1, 180.2 (2017), for conduct occurring on or after August 15, 2011.

Furthermore, UBS, by and through the conduct of Trader F, attempted to manipulate the price of precious metals futures contracts by engaging in scheme to trigger customer stop-loss orders, in violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2012); Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9, 13b (2006), for conduct occurring prior to August 15, 2011; Sections 6(c)(1), 6(c)(3) and 6(d) of the Act, 7 U.S.C. §§ 9(1), 9(3), 13b (2012), and Regulations 180.1 and 180.2, 17 C.F.R. §§ 180.1, 180.2 (2017), for conduct occurring on or after August 15, 2011.

**B. Spoofing in the Precious Metals Futures Markets, in Violation of Section 4c(a)(5)(C) of the Act**

Section 4c(a)(5) of the Act makes it unlawful for “[a]ny person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that . . . is, is of the character of, or is commonly known to the trade as, ‘spoofing’ (bidding or offering with the intent to

cancel the bid or offer before execution).” 7 U.S.C. § 6c(a)(5)(C) (2012). *See also United States v. Coscia*, 866 F.3d 782, 793 (7th Cir. 2017) (holding that because the CEA clearly defines spoofing, it provides adequate notice of prohibited conduct).

As described above, UBS AG, by and through the acts of the Traders, entered bids or offers on a registered entity with the intent to cancel the bids or offers before execution, in violation of Section 4c(a)(5)(C) of the Act. *See, e.g., In re Posen*, CFTC No. 17-20, 2017 WL 3216576, at \*2 (July 26, 2017) (consent order) (manual trader “entered into thousands of bids or offers on a registered entity with the intent to cancel the bids or offers before execution in violation of Section 4c(a)(5)(C) of the Act”); *CFTC v. Oystacher*, 203 F. Supp. 3d 934, 942 (N.D. Ill. 2016) (denying motion for judgment on the pleadings, holding that allegations of placing “both bids and offers with the intent to cancel those bids or offers before execution” constitutes “trading behavior [that] falls within the Spoofing Statute’s defined prohibition”); *CFTC v. Nav Sarao Futures Ltd.*, No. 15-3398, 2016 WL 8257513, at \*10 (N.D. Ill. Nov. 14, 2016) (consent order) (finding that defendants engaged in spoofing techniques by, among other things, “plac[ing] tens of thousands of bids and offers for the E-Mini S&P contract with the intent of cancelling those bids and offers before execution (i.e., Spoof Orders)”); *CFTC v. Khara*, No. 15-CV-03497, ECF 35 at 6 (S.D.N.Y. Mar. 31, 2016) (consent order) (finding that “Defendants ... engaged in unlawful disruptive trading practices or conduct in the gold and silver futures markets ... that were, were of the character of, or were commonly known to the trade as ‘spoofing’ (bidding and offering with the intent to cancel the bid or offer before execution)”).

### **C. UBS AG Is Liable for the Acts of Its Agents**

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 (2017), provide that “[t]he act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust.” Pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2, strict liability is imposed on principals for the actions of their agents. *See, e.g., Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986); *CFTC v. Byrnes*, 58 F. Supp. 3d 319, 324 (S.D.N.Y. 2014).

The acts, omissions, and failures of the Traders occurred within the course and scope of their employment, office, or agency with UBS AG; therefore, pursuant to Section 2(a)(1)(B) of the Act, and Regulation 1.2, UBS AG is liable for the acts, omissions, and failures of the Traders in violation of the provisions of the Act and Regulations cited above.

## **IV.**

### **FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that UBS AG violated the Act and Regulations, as follows:

- (i) UBS AG attempted to manipulate prices, in violation of: Section 9(a)(2) of the Act; 7 U.S.C. § 13(a)(2) (2012); Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9, 13b (2006),



for conduct occurring prior to August 15, 2011; and Sections 6(c)(1), 6(c)(3) and 6(d) of the Act, 7 U.S.C. §§ 9(1), 9(3), 13b (2012), and Regulations 180.1 and 180.2, 17 C.F.R. §§ 180.1, 180.2 (2017), for conduct occurring on or after August 15, 2011; and

(ii) UBS AG engaged in spoofing in the precious metals futures markets in violation of Section 4c(a)(5) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012), for conduct occurring on or after July 16, 2011.

## V.

### OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it:

- A. Acknowledges receipt of 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 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. pt. 148 (2017), 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, §§ 201-253, 110 Stat. 847, 857-874 (codified as amended 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;

- 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. Requests, for the reasons set forth in Respondent's letter dated January 22, 2018 ("Request Letter"), that the Commission advise that, under the circumstances, disqualification under Rule 262(a) of Regulation A and Rule 506(d)(1) of Regulation D of the Securities & Exchange Commission ("SEC"), 17 C.F.R. §§ 230.262(a), 230.506(d)(1) (2017), should not arise as a consequence of this Order;
- F. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that:
    - (i) UBS AG attempted to manipulate prices in violation of: Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2012); Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9, 13b (2006), for conduct occurring prior to August 15, 2011; and Sections 6(c)(1), 6(c)(3) and 6(d) of the Act, 7 U.S.C. §§ 9(1), 9(3), 13b (2012), and Regulations 180.1 and 180.2, 17 C.F.R. §§ 180.1, 180.2 (2017), for conduct occurring on or after August 15, 2011; and
    - (ii) UBS AG engaged in spoofing in the precious metals futures markets in violation of Section 4c(a)(5) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012), for conduct occurring on or after July 16, 2011.
  2. Orders Respondent to cease and desist from violating the Act and Regulations, as set forth below;
  3. Orders Respondent to pay a civil monetary penalty in the amount of fifteen million dollars (\$15,000,000), within ten (10) days of the date of entry of this Order. If the CMP Obligation is not paid in full within ten (10) days of the date of entry of the Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of the Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of the Order pursuant to 28 U.S.C. § 1961 (2012).
  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; and
  5. Advises that, under the circumstances, disqualification under Rule 262(a) of Regulation A and Rule 506(d)(1) of Regulation D of the SEC should not arise as a consequence of this Order.

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

**VI.**  
**ORDER**

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

- A. Respondent and its successors and assigns shall cease and desist from violating:
1. Sections 6(c)(1), 6(c)(3), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9(1), 9(3), 13b, 13(a)(2) (2012), and Regulations 180.1 and 180.2, 17 C.F.R. §§ 180.1, 180.2 (2017); and
  2. Section 4c(a)(5) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).
- B. Respondent shall pay a civil monetary penalty in the amount of fifteen million dollars (\$15,000,000) (“CMP Obligation”), within ten (10) days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten (10) 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 (2012).

Respondent shall pay the CMP Obligation 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:

Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Accounts Receivables  
DOT/FAA/MMAC/AMZ-341  
CFTC/CPSC/SEC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
(405) 954-7262 (office)  
(405) 954-1620 (fax)  
marie.thorn@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorn 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 their authority or control understand and comply with this agreement.
2. Procedures and Controls to Detect Spoofing Activity: Respondent shall continue to implement systems and controls reasonably designed to detect spoofing activity by its traders on or subject to the rules of a registered entity, such as the systems and controls Respondent developed and implemented in response to the Traders' spoofing activity. These systems and controls shall, at a minimum, be designed to detect and generate a report regarding patterns of trading that might constitute spoofing activity. Respondent's personnel shall promptly review such reports and follow up as necessary to determine whether spoofing activity has occurred.
3. Training: Respondent shall maintain its training program that provides training, at least annually, addressing the legal requirements of the Act with regard to spoofing, manipulation and attempted manipulation, to be given to all employees trading on behalf of Respondent or other affiliated entities who submit any orders on futures markets, and their supervisors.
4. Cooperation with the Commission: Respondent shall continue to cooperate fully and expeditiously with the Commission, including the Division, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate with the Commission in any investigation, civil litigation, or administrative matter related to, or arising from, this action. As part of such cooperation, Respondent agrees to:
  - i. preserve and produce to the Commission in a responsive and prompt manner, as requested by Division Staff, all non-privileged documents, information, and other materials wherever located, subject to applicable laws and regulations, including but not limited to audio files, electronic communications, and trading records and data, in the possession, custody, or control of Respondent;
  - ii. comply fully, promptly, completely and truthfully, subject to any legally recognized privilege or applicable law and regulations, with any inquiries or requests for information and documents by the Commission;
  - iii. identify and authenticate relevant documents and other evidentiary materials, execute affidavits or declarations, and provide a corporate representative to testify completely and truthfully at depositions, trial, and

other judicial proceedings, when requested to do so by the Division Staff, subject to applicable law and regulations;

- iv. use its best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of UBS, regardless of the individual's location and at such a location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such proceeding, trial or investigation, subject to applicable law and regulations; and
  - v. subject to applicable laws and regulations, use its best efforts to assist in locating and contacting any prior (as of the time of the request) officer, director, employee or agent of UBS.
5. Prohibited or Conflicting Undertakings: Should the Undertakings herein be prohibited by, or be contrary to, the provisions of any obligations imposed on Respondent by any presently existing, or hereinafter enacted or promulgated laws, rules, regulations, or regulatory mandates, then Respondent shall promptly transmit notice to the Commission (through the Division) of such prohibition or conflict, and shall meet and confer in good faith with the Commission (through the Division) to reach an agreement regarding possible modifications to the Undertakings herein sufficient to resolve such inconsistent obligations. In the interim, Respondent will abide by the obligations imposed by the laws, rules, regulations, and regulatory mandates. Nothing in these Undertakings shall limit, restrict or narrow any obligations pursuant to the Act or the Commission's Regulations promulgated thereunder, including, but not limited to, Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31, 1.35 (2017), in effect now or in the future.
6. 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.
- D. Based on the nature of the violations; the findings made, and the sanctions, conditions, and undertakings imposed in the Order; and the facts and representations in Respondent's Request Letter, the Commission advises<sup>4</sup> that, under the circumstances, disqualification

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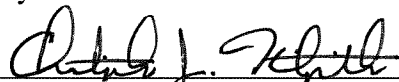
<sup>4</sup> Rule 506(d)(1)(iii)(B) disqualifies an issuer from relying on the private offering exemptions provided for in Rule 506 if they or certain related parties are "subject to a final order of . . . [*inter alia*] the U.S. Commodity Futures Trading Commission . . . that: . . . [c]onstitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct." Rule 506(d)(2)(iii), however, provides that disqualification "shall not apply" if the CFTC "advises in writing" that disqualification under Rule 506(d)(1) "should not arise as a consequence of such order." See also 17 C.F.R. §§ 262(a)(3)(ii), (b)(3) (parallel provisions under Regulation A); SEC, Exemptions to Facilitate Intrastate and Regional Securities Offerings, 81 Fed. Reg. 83,494, 83,545 (Nov. 21, 2016) (stating that disqualification under Rule 504 arises "absent a waiver or other exception provided in Rule 506(d)").

under Rule 262(a) of Regulation A and Rule 506(d)(1) of Regulation D of the SEC, 17 C.F.R. §§ 230.262(a), 230.506(d)(1) (2017), should not arise as a consequence of this Order.<sup>5</sup>

The Commission notes that if the facts are different from those represented, or Respondent fails to comply with the terms of the Order, the Commission may, in its discretion, revisit its advice that disqualification should not arise. The Commission reserves the right, in its sole discretion, to withdraw or otherwise revoke or further condition its advice under those circumstances.

**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: January 29, 2018

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<sup>5</sup> In providing this advice, the Commission considered factors similar to those considered by the SEC when it issues waivers of disqualification under Regulation D and Regulation A. The SEC grants waivers where an applicant has shown “good cause and ... if the [SEC] determines that it is not necessary under the circumstances that the exemptions be denied,” 17 C.F.R. §§ 230.262(b)(2), 230.506(d)(2)(ii), based on its analysis of how the identified misconduct bears on the applicant’s fitness to participate in offerings exempted under Regulation D and Regulation A. See SEC, Div. of Corp. Fin., *Waivers of Disqualification Under Regulation A and Rules 505 and 506 of Regulation D*, <https://www.sec.gov/divisions/corpfin/guidance/disqualification-waivers.shtml>; SEC, Div. of Corp. Fin., *Rule 504 of Regulation D: A Small Entity Compliance Guide for Issuers*, <https://www.sec.gov/divisions/corpfin/guidance/rule504-issuer-small-entity-compliance.html>. The SEC considers the following primary factors in determining whether to grant a waiver request: (i) the nature of the violation and whether it involved the offer or sale of securities; (ii) whether the violation required scienter; (iii) who was responsible for the misconduct; (iv) what was the duration of the misconduct; (v) what remedial steps have been taken; and (vi) the impact on the party seeking a waiver and third parties if a waiver is denied. Respondent’s Request Letter addressed these factors in the context of this Order.

The Commission considers these factors in the context of the markets it regulates, and also takes into account whether it determined that a statutory disqualification under the Act should arise solely based on the misconduct found herein and leading to disqualification under Regulation A and Regulation D. The Commission is guided by waivers granted by the SEC in prior cases involving similar facts and circumstances. See, e.g., *In re JPMorgan Chase Bank, N.A.*, Securities Act Release No. 9993, 2015 WL 9256636 (Dec. 18, 2015) (SEC order determining that good cause had been shown that it was not necessary to deny reliance on the exemption under Rule 506 of Regulation D, where disqualification had been triggered by a CFTC order relating to JPMCB’s failure to adequately disclose certain conflicts of interest to clients); *In re UBS AG*, Securities Act Release No. 9787, 2015 WL 2395516 (May 20, 2015) (SEC order determining that good cause had been shown that it was not necessary to deny reliance on the exemption under Rule 506, where disqualification had been triggered by a criminal guilty plea relating to FX benchmark manipulation and noting the entry of parallel CFTC orders); *In re Barclays PLC*, Securities Act Release No. 9786, 2015 WL 2395515 (May 20, 2015) (SEC order determining that good cause had been shown that it was not necessary to deny reliance on the exemption under Rule 506 where disqualification had been triggered by a CFTC order relating to FX benchmark and ISDAFIX manipulation); see also, e.g., *Piper Jaffray & Co.*, SEC No-Action Letter, 2015 WL 4451053 (July 20, 2015) (SEC no-action letter determining that good cause had been show that it was not necessary to deny reliance on the exemptions under Regulation A and Rule 506 of Regulation D, where disqualification had been triggered by an SEC order, and applying the same factors to consideration of waiver for both exemptions)..