

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73681 / November 25, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3973 / November 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16288

In the Matter of

**HSBC Private Bank (Suisse),
SA**

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 15(b)(6) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTIONS 203(e) AND (k) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (the “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)(6) and 21C of the Securities Exchange Act of 1934 (the “Exchange Act”) and Sections 203(e) and (k) of the Investment Advisers Act of 1940 (the “Advisers Act”) against HSBC Private Bank (Suisse), SA (“HSBC Private Bank” or the “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. Respondent admits the facts set forth in Section III.B. through H. below, acknowledges that its conduct violated the federal securities laws, admits the Commission’s jurisdiction over it and the subject matter of these proceedings and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b)(6) and 21C of the Exchange Act and Sections 203(e) and (k) of the Advisers Act, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the “Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

A. Summary

1. From at least 2003 until its exit in 2011 from its business of providing broker-dealer and investment advisory services to U.S. clients (the "U.S. cross-border securities business"), HSBC Private Bank, through actions of certain relationship managers ("RMs") employed by it, its predecessor ("HSBC Private Bank (Legacy)"), and HSBC Gyuertzeller Bank AG ("HSBC Gyuertzeller Bank"), which became a part of HSBC Private Bank in 2009, violated certain provisions of the federal securities laws by providing cross-border brokerage and investment advisory services to U.S. clients without registering with the Commission as a broker-dealer and investment adviser.² During that time, the combined banks had approximately 368 client accounts that held securities and were beneficially owned by permanent U.S. residents ("U.S. clients"). Respondent was aware that, in certain instances, if its representatives were to provide such services in the United States or otherwise by use of the mails or other modes of interstate commerce, it would be required to register in the U.S. as a broker-dealer and investment adviser, absent an available exemption from registration. Neither HSBC Private Bank, HSBC Private Bank (Legacy), nor HSBC Gyuertzeller Bank was registered with the Commission. Respondent's U.S. cross-border securities business activities realized approximately \$5.72 million in pre-tax income through its unlawful U.S. cross-border securities business activities.

2. With limited exceptions, not applicable here, Section 15(a)(1) of the Exchange Act requires anyone who makes use of the mails or any other means or instrumentality of interstate commerce, to engage in the business of effecting transactions in securities for the account of others, or to engage in a regular business of buying and selling securities for the person's own account, to register with the Commission as a broker-dealer.

3. Under Section 202(a)(11) of the Advisers Act, an investment adviser is a person who, for compensation, is in the business of providing investment advice to with respect to securities, unless the person falls within one of the exclusions from the definition of investment adviser. Per Section 203(a) of the Advisers Act, an investment adviser whose principal offices and places of business are outside the U.S. that make use of the mails or any means or instrumentality of interstate commerce in doing business with U.S. clients is required to register with the Commission unless an exemption from registration is available.

¹ The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

² Throughout this Order, the term "HSBC Private Bank" will be used to refer collectively to HSBC Private Bank (Suisse) SA (and its predecessors) and HSBC Gyuertzeller Bank AB between 2003 and the merger in 2009, and to the merged entity from 2009 onward. The term "HSBC Private Bank (Legacy)" will refer to HSBC Private Bank (Suisse) SA (and its predecessors) alone between 2003 and the merger in 2009.

4. Certain HSBC Private Bank RMs, among other things, traveled to the United States to solicit new clients and/or service existing clients by providing investment advice and by soliciting or attempting to solicit securities transactions. These activities required HSBC Private Bank to register with the Commission, and it did not do so.

5. HSBC Private Bank understood that there was a risk of violating the federal securities laws by providing broker-dealer and investment advisory services to U.S. clients without being registered with the Commission, and took certain measures to manage and mitigate the risk that prohibited broker-dealer and investment advisory services might be provided to U.S. clients. However, HSBC Private Bank did not effectively implement these measures and did not sufficiently monitor the U.S. cross-border securities business. As a result, HSBC Private Bank violated its policies and the federal securities laws.

6. In 2010, HSBC Private Bank determined to end its U.S. cross-border securities business. In 2011, it developed a procedure for exiting the business, and put a team in place to implement the procedure. Respondent began to exit the business in May 2011. Nearly all of its U.S. client accounts were closed or transferred by the end of 2011.

7. Because certain of its RMs provided broker-dealer and investment advisory services in the United States at a time when neither HSBC Private Bank, HSBC Private Bank (Legacy), nor HSBC Gyuertzeller Bank was registered with the Commission as a broker-dealer or investment adviser, Respondent willfully³ violated Exchange Act Section 15(a) and Advisers Act Section 203(a).

B. Respondent

8. HSBC Private Bank (Suisse) SA is a corporation incorporated and domiciled in Switzerland.⁴ HSBC Gyuertzeller Bank merged with HSBC Private Bank in 2009. Both HSBC Private Bank and HSBC Gyuertzeller Bank had operations in Lugano, Geneva, and Zurich, Switzerland. From 2003 through 2008, the private banks were operated independently, and each had its own executive committee (“ExCo”). The banks were part of “Group Private Banking” (“GPB”), and were governed by a parent-level entity, HSBC Holdings plc (“HSBC Group”), a U.K.-based multinational financial services holding company that provides a broad range of services to individual and corporate clients through its operating subsidiaries.⁵

³ 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)).

⁴ Formerly HSBC Republic Bank (Suisse) SA.

⁵ All of HSBC Group’s relevant policies and procedures govern employees of the private bank subsidiaries.

C. Respondent's U.S. Cross-Border Securities Business

9. During the period from at least 2003 through 2011, HSBC Private Bank, through actions of certain of its RMs, engaged in broker-dealer and investment adviser activities with U.S. clients. At various times during this period, among other things, HSBC Private Bank RMs solicited, established, and/or maintained brokerage and investment advisory accounts for U.S. clients; accepted and executed orders for securities transactions; solicited securities transactions; handled U.S. clients' funds and securities; provided account statements and other account information; and provided investment advice. These activities directly involved the use of the means or instrumentalities of interstate commerce, and consequently HSBC Private Bank was required to register under the federal securities laws. For these and other services provided to certain U.S. clients, HSBC Private Bank received transaction-based compensation or investment advisory fees.

10. Between 2003 and 2011, the combined banks maintained as many as 368 U.S. client accounts holding securities. The U.S. client accounts constituted as much as \$775 million in securities assets under management. These accounts were dispersed between HSBC Private Bank (Legacy) and HSBC Geyerzeller Bank. In 2003/2004, as many as 100 RMs serviced U.S. client accounts from desks in the banks' offices in Zurich, Geneva, and Lugano, Switzerland.

11. From at least 2003 to May 2011, Respondent continued to collect some broker-dealer commissions (or other remuneration based directly or indirectly on securities transactions) and investment advisory fees on U.S. client accounts. Altogether, between 2003 and 2011, the combined banks generated pre-tax income of approximately \$5.72 million through the use of U.S. jurisdiction means.

12. With respect to these accounts, RMs used a variety of the means or instrumentalities of interstate commerce to engage in the U.S. cross-border securities business without appropriate registration. For example, RMs traveled to the United States to meet with existing and/or prospective clients to provide investment advice and/or solicit securities transactions.

13. From 2003 through 2009, HSBC Private Bank RMs made more than 40 trips to the United States to meet with clients. These trips involved visits with approximately 20 U.S. clients, and the provision or solicitation of broker-dealer and/or investment advisory services.

14. In addition to traveling to the United States, RMs with U.S. clients also communicated securities-related information to their U.S. clients by means of interstate commerce while the clients were present in the United States, including through mails and e-mail. RMs provided investment advisory and broker-dealer services to these U.S. clients and made recommendations as to the merits of various types of investments.

D. Respondent Was Not Registered with the Commission to Provide Broker-Dealer or Investment Advisory Services to U.S. Clients

15. The above-referenced activities were engaged in at a time during which Respondent was not registered as a broker-dealer under Exchange Act Section 15(a) or as an investment

adviser under Advisers Act Section 203(a), and was not exempted from registration as a broker-dealer or investment adviser.

E. Respondent Was Aware of the Broker-Dealer and Investment Adviser Registration Requirements

16. As described in Sections F and G below, throughout the period in question, Respondent was aware of the broker-dealer and investment adviser registration requirements related to the provision of cross-border broker-dealer and investment advisory services to U.S. clients.

F. Efforts to Address the U.S. Cross-Border Securities Business at HSBC Private Bank (Legacy)

17. Approximately 50 HSBC Private Bank (Legacy) RMs serviced U.S. clients with securities accounts on desks in Geneva, Zurich, and Lugano, Switzerland. Between 2003 and 2009 (when it merged with HSBC Gyuertzeller Bank), HSBC Private Bank (Legacy) maintained as many as 193 U.S. client accounts holding securities. HSBC Private Bank (Legacy)'s U.S. client accounts held as much as \$366 million in securities assets.

18. In October 2003, in response to HSBC Private Bank (Legacy)'s request for advice, an outside law firm provided it with guidance regarding U.S. cross-border activities. In part as a result of this advice, the HSBC Private Bank (Legacy) ExCo decided to create a dedicated North American—or “NORAM” desk—to consolidate U.S. client accounts among a smaller number of RMs and service them in a compliant manner that would not violate the U.S. registration requirements. The establishment of NORAM, which operated from Switzerland, was announced internally on November 25, 2004. “This decision has been made so that the appropriate procedures, processes and controls can be put around these clients as they have unique. . . compliance requirements that need to be met.” “All US resident clients are to be transferred to the NORAM Country Team by the end of 2004.” This deadline was not met, in part because RMs did not want to lose clients by transferring them to NORAM.

19. In June 2005, Group Audit Private Banking, an internal audit group, announced an internal audit of HSBC Private Bank (Legacy). The audit was conducted between June 13 and July 15, 2005. The audit was completed, and a report circulated, in mid- to late July 2005. Although the report noted “good progress” in some areas since the previous audit in 2003, its general conclusion, as set forth in the Management Summary, was more negative, assessing levels of controls in HSBC Private Bank (Legacy)'s Front Office to be “below standard.” Specifically, the portion of the report regarding NORAM concluded:

- GPB's cross-border marketing guidelines were not always respected. Investment instructions were being received from persons residing in the U.S. and executed.
- An HSBC Private Bank (Legacy) U.S. cross-border procedure was prepared in March 2004, and approved by its ExCo in March 2005; however, there is no evidence that this procedure was published to all RMs with U.S. clients.

- U.S. client accounts were required to be transferred to NORAM by April 1, 2005, however, “55 accounts in Geneva and 21 accounts in Zurich still have not been transferred, out of which 14 are physical persons.”

The report also identified deficiencies with travel reports and indicated that “hold mail controls are not being performed” for certain clients.

20. The head of HSBC Private Bank (Legacy) wrote a letter to the Audit Committee criticizing the audit, stating, among other things, that NORAM was new and could not be expected to complete the transfer of accounts in so short a timeframe. When the Audit Committee met, it affirmed its support for the internal audit results and process and directed management to do its utmost to ensure adherence with the rules.

21. HSBC Private Bank (Legacy) was slow to address the substantive deficiencies the internal audit identified. It took approximately eight months for HSBC Private Bank (Legacy) to finalize a cross-border policy. The policy was “broadcast” to all employees on March 29, 2006.

22. Nearly two years after the 2005 internal audit, and a year after the dissemination of the cross-border policy, HSBC Private Bank (Legacy)’s U.S. cross-border securities business was not fully compliant with the policy. An internal review undertaken by the Compliance department in April 2007 identified several deficiencies in HSBC Private Bank (Legacy)’s efforts to consolidate U.S. accounts in a compliant NORAM group. According to the report, “[w]ith respect to the U.S. policy, weaknesses were identified” in several areas, including:

- U.S. client accounts which had not been transferred to NORAM;
- Certain U.S. client accounts holding U.S. securities.
- Account opening forms had been signed inside the U.S.
- Mail was sent to clients in the U.S.

23. The internal audit report commented, “[s]ome of these weaknesses represent a major risk for HSBC Private Bank (Legacy) . . . [such as] when signing account opening forms in the US or when we provide Internet Banking Services to U.S. residents.”

24. In response to the 2007 audit, and continuing into 2008, HSBC Private Bank (Legacy) undertook additional efforts to encourage compliance with U.S. securities rules. HSBC Private Bank (Legacy) introduced enhanced training for RMs in August 2007. In January 2008, HSBC Private Bank (Legacy) put in place additional procedures to scrutinize more carefully RM travel plans. HSBC Private Bank (Legacy) also modified its information system to preclude the possibility of certain securities sales in the accounts of certain U.S. clients. In October 2008, HSBC Private Bank (Legacy) issued and disseminated a revised U.S. policy referencing the SEC registration rules and stating that no new U.S. resident accounts would be opened and any exceptions would be limited to cash deposits.

25. Despite these efforts, progress in migrating these U.S. client accounts to NORAM and achieving full compliance remained slow through 2008. Ultimately, not all of the U.S. client accounts that were intended to be moved to the NORAM unit were, in fact, transferred. A reason for this was that RMs were reluctant to shift accounts to the NORAM business because they did not want to lose the accounts.

26. In 2008, HSBC Private Bank (Legacy) maintained 156 U.S. client accounts that held securities. These accounts contributed \$198 million to HSBC Private Bank (Legacy)'s securities assets under management.

G. Efforts to Address the U.S. Cross-Border Securities Business at HSBC Guyerzeller Bank

27. Between 2003 and 2009, when it merged with HSBC Private Bank (Legacy), HSBC Guyerzeller Bank maintained as many as 176 U.S. client accounts holding securities. HSBC Guyerzeller Bank's U.S. client accounts held as much as \$461 million in securities assets. These U.S. client accounts were serviced by as many as 44 HSBC Guyerzeller Bank RMs on desks physically located in Geneva, Zurich, and Lugano, Switzerland.

28. In 2001, HSBC Group, made the decision to merge two smaller and recently acquired private banks—Credit Commercial de France and Handelsfinanz—into HSBC Guyerzeller Bank. Although HSBC Guyerzeller Bank had a pre-existing base of U.S. clients at the time, the merger sharply increased the number of U.S. clients. As a result of the merger and the influx of U.S. clients, HSBC Guyerzeller Bank engaged outside counsel from a law firm based in the United States to provide advice regarding servicing U.S. clients. A legal memorandum was provided in response to this request for advice, but it does not appear to have been distributed to HSBC Guyerzeller Bank's RMs.

29. On May 2, 2003, in an attempt to provide advice to HSBC Guyerzeller Bank's RMs that was consistent with the advice he obtained from the outside law firm, HSBC Guyerzeller Bank's director of compliance sent a memorandum to all RMs in the Lugano and Geneva offices warning RMs: "No solicitation of clients and/or marketing activities in the US."

30. On January 14, 2004, the HSBC Guyerzeller Bank ExCo held a meeting that discussed proposed guidelines for servicing U.S. client accounts. The meeting minutes recite the ExCo's understanding of U.S. legal requirements: "US legislation forbids foreign entities from providing investment advice to U.S. residents over the phone, by mail, by fax, or by email if that foreign entity is not registered with the SEC." The ExCo decided (a) to stop opening accounts for U.S. clients, and (b) "in order [to] reduce the potential legal risk . . . to the bank," to close each U.S. client account with a balance of under \$750,000, unless it was related to a larger client group.

31. On January 30, 2004, a thorough summary of the ExCo's decisions (at the January 14, 2004 meeting and at a subsequent meeting) was circulated to all RMs. In addition to reflecting the decisions above, it also provided more extensive guidance on how to service U.S. client accounts in a compliant manner, including restrictions on communications and travel.

32. On December 15, 2004, the HSBC Guyerzeller Bank's ExCo received an update regarding the "streamlining of the US client base," which referred to closing certain categories of U.S. client accounts. HSBC Guyerzeller Bank planned to preserve the 14 most valuable client relationships, while eliminating other U.S. accounts. The ExCo believed that this plan would enable them to service the "Group of 14" U.S. client accounts within the "private adviser" exemption from the Investment Advisers Act's registration requirements.⁶ The HSBC Guyerzeller Bank's ExCo set a target completion date for the plan of June 2005. The June 2005 deadline was not met, in part because RMs did not want to close their clients' accounts.

33. On January 29, 2007, a HSBC Guyerzeller Bank executive emailed the Compliance director regarding a number of U.S. client accounts that should have been closed. The email attached an updated list of "all relationships which were supposed to be closed 2 years ago but still remain at the bank." The executive continued, "we still see a fair number of relationships where there is a regular contact from and to the US, where regular mail is sent." The executive asked, "In order to reduce our exposure there may I ask you to remind these [RMs] to finally close these relationships and fast?"

34. Progress was slow. Nearly two years later, on December 10, 2008, the HSBC Guyerzeller Bank ExCo held a meeting that included a report "regarding the review of client relationships with US persons." This review revealed that U.S. accounts that were expected to be closed were still open.

H. Merger of HSBC Private Bank (Legacy) and HSBC Guyerzeller Bank and the Exit from the U.S. Cross-Border Business

35. In 2008, HSBC Group made plans to merge HSBC Private Bank (Legacy) and HSBC Guyerzeller Bank into a single entity, which would be referred to as HSBC Private Bank.

36. In July 2008, amidst a well-publicized civil and criminal investigation of UBS AG ("UBS"), a large Switzerland-based multinational financial services company, arising from UBS's provision of cross-border banking, broker-dealer and investment advisory services to U.S. clients, UBS formally announced that it would cease providing banking services to U.S. clients through its non-U.S. regulated entities. In 2008, as the UBS investigation became public, HSBC Private Bank and HSBC Guyerzeller Bank took steps to avoid accepting new U.S. clients from UBS. HSBC Private Bank and HSBC Guyerzeller Bank had policies restricting the opening of accounts for any new U.S. clients. In addition, on January 9, 2009, HSBC Private Bank management sent a broadly-distributed email stating, "UBS is closing approximately 19,000 accounts for US persons

⁶ Under the "private adviser" exemption, as previously set forth in Section 203(b)(3) of the Investment Advisers Act of 1940, advisers with a small number of clients were exempt from the registration requirements of the IAA. Section 203(b)(3) provided that "[registration is not required for] any investment adviser who during the course of the preceding twelve months has had fewer than fifteen clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under title I of this Act." The Dodd-Frank Act eliminated this private adviser exemption. *See* 15 U.S.C. § 80b-3.

and residents as part of an agreement with US authorities. The accounts are described as undeclared for US tax purposes. Please advise your business that accounts should not be opened for US persons and residents that are closing accounts at UBS (source of funds). Moreover, RMs that handle accounts for US persons and residents should not accept funds from UBS into the existing accounts”

37. On February 10, 2009, the HSBC Private Bank ExCo determined to exit part of the U.S. market. Due to the “additional regulatory burden associated with the maintenance of U.S. clients, the HSBC Private Bank ExCo has taken strategic decisions designed to mitigate the risk of accidental breach of regulations and to reflect more accurately the cost of providing banking services to U.S. clients.” HSBC Private Bank ExCo decided to close all accounts of US clients that (1) had not signed a W-9 form; or (2) had assets under management of under \$1 million. Accounts of U.S. clients with a W-9 and assets under management of over \$1 million were not required to be closed under this policy.

38. In December 2010, the GPB executive committee decided to exit the U.S. client business entirely. From then until the end of May 2011, GPB developed a revised U.S. clients policy, established a process for closing U.S. client accounts, and established an account closing team to implement the new process.

39. HSBC Private Bank began to exit the business in May 2011. Pursuant to the process that had been developed, RMs were not involved in closing their clients’ accounts. HSBC Private Bank did not charge U.S. clients any brokerage or investment advisory fees associated with closing their accounts.

40. By the end of 2011, nearly all of HSBC Private Bank’s U.S. client accounts were closed. As of July 2014, all known U.S. client accounts with securities that could be closed (consistent with Swiss legal obligations) had been closed.

I. Violations

41. As a result of the conduct described above, Respondent willfully violated Exchange Act Section 15(a) and Advisers Act Section 203(a).

IV.

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

Accordingly, pursuant to Sections 15(b)(6) and 21C of the Exchange Act and Sections 203(e) and (k) of the Advisers Act, it is hereby ORDERED that:

- A. Respondent is censured;
- B. Respondent cease-and-desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act or Section 203(a) of the Advisers Act; and

C. Respondent shall, within ninety (90) days of the entry of this Order, pay disgorgement of \$5,723,193, prejudgment interest of \$4,215,543, and a civil money penalty in the amount of \$2,600,000 to the Securities and Exchange Commission for remission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying HSBC Private Bank (Suisse) SA as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Scott W. Friestad, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-5010.

By the Commission.

Brent J. Fields
Secretary