

Public Statements & Remarks

Statement of Commissioner Christy Goldsmith Regarding HSBC for Market Manipulation and Widespread Use of WhatsApp and Other Unauthorized Communications Platforms to Evade Regulatory Oversight

May 12, 2023

I support the enforcement action that the CFTC brings today against HSBC Bank USA, N.A. because it protects market integrity, brings accountability for market manipulation, and builds on the CFTC's record of holding banks accountable for their pervasive use of unauthorized communications to evade regulatory oversight. The communications between traders in the records that *were* properly kept reveal HSBC's manipulative trading practices, and serve as an example of just how critical regulatory visibility into trader communications is to protect markets and investors, and promote market integrity.

This action illustrates why the CFTC's previous "offline communication" enforcement actions, which levied over \$700 million in penalties against 11 Wall Street banks,[1] are critically important. Actions to evade regulatory oversight send a strong signal that there may be something that bankers are looking to hide. The CFTC, in partnership with the Securities and Exchange Commission ("SEC"), will continue to show zero tolerance for evading, or attempting to evade, regulatory oversight.

I. HSBC's manipulation harmed clients and the integrity of markets.

HSBC's illegal conduct stemmed from a widespread culture of non-compliance. Over the course of four years, HSBC traders used manipulative tactics to move swap and Treasury prices in a way that raised HSBC's own profits at the expense of clients who were engaging in the trades as part of a broader deal to have HSBC issue bonds for them.

HSBC senior leadership directed these trades. Leadership and traders openly discussed their goal of manipulating prices, both internally and with the brokers whose prices screens were being manipulated. In one issuer swap transaction, the HSBC Head of North American Rates directed a trader to “push the screen as much as we can before the pricing.” Traders also described manipulation or potential manipulation using terms such as “hitting spreads down,” “hit[ting] the screen to avoid a los[s],” “hit[ting] the sht [sic] out of it,” “trying to get this screen down,” needing to “move [the] screen,” and “pushing [basis swaps] down.” These are but a few of many communications that evidence intent to manipulate the market.

Even discussions like these on HSBC’s recorded phone lines were not flagged by any type of surveillance, nor was the trading flagged by any trade surveillance system. When a broker firm raised instances of manipulative trading to HSBC’s attention, the bank’s compliance team did not investigate and simply warned the trader to be more careful.

Market manipulation undermines U.S. markets and threatens the public interest. There are concerning indications from this investigation that trading patterns like the ones the Commission found at HSBC may be followed by others in the swap markets.[2]

II. Accountability for recordkeeping requirements increases the CFTC’s ability to identify market manipulation and other illegal conduct.

This action, and other “offline communication” cases, prove how critical recordkeeping requirements are to regulators’ ability to police U.S. markets. Some of the evidence of intent to manipulate prices come from messages recorded in compliance with CFTC requirements. That proves how pernicious it is for HSBC to flout recordkeeping requirements. HSBC’s culture of evasion threatens to undermine the visibility regulators use to stop illegal conduct and bring accountability. It also makes it much harder for the bank itself to operate a compliance program that can actually identify and halt manipulation.

Similar to other cases of this unacceptably common Wall Street offline communications practice,[3] during an investigation into HSBC’s trading, the CFTC found that HSBC was unable to provide all responsive records. This triggered another investigation, where we found that most employees used unmonitored channels like personal text message, WhatsApp, or personal email, for firm business. Just like when they learned about market manipulation, senior leadership with compliance responsibilities knew and did nothing to fix the problem. Indeed, the senior officials responsible for HSBC’s compliance also used illegal offline communication platforms.

That awareness and participation by senior leadership in violations of law and bank policies is the common thread tying this case together. Banks serve as the first line of defense against insider trading, market manipulation and other illegal behavior that undermines market integrity.[4] But they cannot serve that function if the “tone at the top” of the organization is one of evasion, manipulating markets for their own advantage, and seeing what they can get away with.

It’s far past time for all banks (Wall Street, foreign, or otherwise) to stop waiting until they are caught by regulators before halting illegal conduct. And if those banks cannot or will not shift their culture to one of compliance, then it’s time for the Commission to ramp up the penalties and other tools designed to deter illegal behavior.

III. Given the importance of recordkeeping to policing markets, resolution of this enforcement action must be strong to deter violations across the market.

We are now seeing that attempts to evade recordkeeping requirements are a global problem. The CFTC must use all of its tools to deter this conduct and send a zero-tolerance message. While I support the \$90 million in combined penalties with the SEC, deterrence comes from more than penalties. In fact, penalties risk becoming a cost of business to large banks. Requiring defendants to admit to their wrongdoing is another important tool to promote deterrence to the fullest extent.

Last year, I proposed a Heightened Enforcement Accountability and Transparency (“HEAT”) Test for the CFTC to identify where the public interest goals of law enforcement would benefit from defendant admissions.[5] This HEAT Test lays out conditions to identify cases where the CFTC should send a message about the strength of the enforcement program and the seriousness of the conduct at issue—and this case meets that test.[6]

The use of unauthorized communications platforms, including by senior supervisors and managing directors, was egregiously pervasive at HSBC. Continued use of unauthorized communication platforms threatens market integrity and may obstruct enforcement investigations, like those in the manipulation action, by obscuring or hiding records and communications. As we are seeing that use of unauthorized communication tools is a common evasive technique for both Wall Street and foreign banks, it is especially important to reinforce that requiring admissions of wrongdoing will be a routine feature of all settlements for these actions.

I applaud the CFTC for requiring HSBC to admit its unauthorized communications. Defendant admissions should be required in all offline communication cases, as a powerful tool of accountability, justice and deterrence.

[1] See Commodity Futures Trading Commission, CFTC Orders 11 Financial Institutions to Pay Over \$710 Million for Recordkeeping and Supervision Failures for Widespread Use of Unapproved Communication Methods (<https://www.cftc.gov/PressRoom/PressReleases/8599-22>) (Sept. 27, 2022).

[2] Along with the seeming routine way that brokers treated this illegal conduct, some HSBC traders provided the impression that this behavior also occurred at other banks. One trader noted that “[s]ome guys [at other banks] will indicate tighter to mid [i.e. the price for the issuer swap] because they plan on manipulating screens lower” and that “if another bank ‘ploughs [] spreads down’ the mid-level shown on the screen would be ‘artificially low.’”

[3] Commodity Futures Trading Commission, CFTC Orders 11 Financial Institutions to Pay Over \$710 Million for Recordkeeping and Supervision Failures for Widespread Use of Unapproved Communication Methods (<https://www.cftc.gov/PressRoom/PressReleases/8599-22>) (Sept. 27, 2022).

[4] CFTC Commissioner Christy Goldsmith Romero, Statement of Commissioner Christy Goldsmith Romero Regarding Holding Wall Street Accountable | CFTC (<https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement092722>) (Sept. 27, 2022).

[5] CFTC Commissioner Christy Goldsmith Romero, *Proposal for a Heightened Enforcement Accountability and Transparency (“HEAT”) Test to Require More Defendants to Admit to Wrongdoing in Settlements*, (Sept. 19, 2022),

<https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement091922>

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[6] Under my HEAT Test, cases where admissions are needed to achieve an appropriate level of accountability and deterrence include one or more of the following factors: Egregious conduct; The presence of a criminal scheme; Significant harm or risks of harm to investors and/or market participants; Significant harm or risks of harm to market integrity; A recidivist defendant; Obstruction, lying or concealment, in an investigation/examination by the CFTC, other federal authority on the same conduct, or a self-regulatory organization; and/or The need to send a pronounced message about particular conduct or practices.

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