
BEFORE THE BUSINESS CONDUCT COMMITTEE
OF THE
CBOE FUTURES EXCHANGE, LLC

IN THE MATTER OF:)	
)	
)	File No. ICT 109060
UBS SECURITIES LLC)	
)	Exchange Rule 714 – Imposition of Fines
)	Minor Rule Violations – Exchange of Contract
)	Related Position (“ECRP”)
Respondent.)	

DECISION AND ORDER

I. BACKGROUND

On March 11, 2016, CBOE Futures Exchange, LLC (“CFE” or the “Exchange”) issued a Disciplinary Notice of a Minor Rule Violation (“Disciplinary Notice”) which assessed a Summary Fine of \$2,500 to UBS Securities LLC (“UBS” or “Respondent”) pursuant to Exchange Rule 714 – Imposition of Fines for Minor Rule Violations. The Respondent was charged with violations of Exchange Rule 414(f) – Exchange of Contract Related Position (“ECRP”) for failing to properly document ECRP trade activity on a customer account statement for trade date January 26, 2015. Specifically, CFE Regulation (“CFER”), after reviewing UBS’ daily account statements for UBS client 009VIXID, found that the ECRP transactions executed on January 26, 2015 were not properly labeled or identified as such. This was UBS’ second violation of Exchange Rule 414(f) within a rolling twelve (12) month period.¹

On April 6, 2016, UBS filed its Answer with the CFE Office of the Secretary. UBS does not dispute the violation of Exchange Rule 414(f), but rather, argues that the second violation in ICT 109060 should “be rescinded on the grounds that the subject violation occurred prior to the Firm being on notice that it had

¹ UBS received a notice under Exchange Rule 714 on September 24, 2015 for a Rule 414(f) violation that occurred on June 24, 2014.

committed a first violation of Rule 414(f); the letter of caution issued on September 24, 2015, should cover any similar violation which occurred prior to that date.” On May 25, 2016, the Exchange filed its response to UBS’ Answer and requested that the BCC uphold the \$2,500 Summary Fine imposed by CFER.

Exchange Rule 714(c)(i) permits a Trading Privilege Holder or Related Party of a Trading Privilege Holder that is fined pursuant to Exchange Rule 714 to contest the Exchange’s determination through the submission of a written Answer in accordance with Exchange Rule 705, at which point the matter becomes subject to review by a BCC Panel. In such Answer, the Respondent must include a request for a hearing if a hearing is desired and in this case, UBS has not requested a hearing and as such, the BCC Panel has conducted its review of this matter based upon the parties’ written submissions to the BCC.

II. BURDEN OF PROOF

On May 25, 2016, pursuant to Exchange Rule 714(c)(i), the BCC Panel, consisting of three members of the BCC, reviewed UBS’ and the Exchange’s written submissions.

This Decision represents the unanimous decision of the members of the BCC Panel and is based solely on the parties’ written submissions reviewed by the BCC Panel in this matter. The BCC Panel considered all of the evidence and arguments presented in the written submissions and the arguments advanced by the parties are rejected or sustained to the extent that they are inconsistent or in accord with this Decision. All findings and conclusions contained in this Decision are based upon a preponderance of the evidence as the applicable standard of proof; and the BCC Panel notes that the Exchange has the burden of proving, by a preponderance of the evidence that UBS violated Exchange Rule 414(f).

III. DISCIPLINARY JURISDICTION OF THE EXCHANGE

Exchange Rule 701(a), provides, in relevant part, that “[a] Trading Privilege Holder and any Related Party who is alleged to have violated, or aided and abetted a violation of... any Rule of the Exchange... shall be subject to the disciplinary jurisdiction of the Exchange...”² During all relevant periods herein, UBS was a Trading Privilege Holder (“TPH”) of the Exchange and therefore, subject to the disciplinary jurisdiction of the Exchange.

IV. RELEVANT RULES

During all relevant periods herein, Exchange Rules 414(f) – Exchange of Contract Related Position (“ECRP”) and 714 – Imposition of Fines for Minor Rule Violations were in full force and effect.

² See Exchange Rule 701(a).

V. UBS FAILED TO PROPERLY DOCUMENT ECRP TRADE ACTIVITY ON A CUSTOMER ACCOUNT

A. RULE 414(f) REQUIREMENTS

Exchange Rule 414(f) requires, in relevant part, that: “[e]ach Trading Privilege Holder that acts as an agent for an Exchange of Contract for Related Position shall record the following details with respect to the Contract leg of the Exchange of Contract for Related Position on its order ticket:...that the transaction is an Exchange of Contract for Related Position...Every Trading Privilege Holder handling, executing, clearing or carrying Exchange of Contract for Related Position transactions or positions shall identify and mark as such by appropriate symbol or designation all Exchange of Contract for Related Position transactions or positions and all orders, records and memoranda pertaining thereto.”

B. VIOLATION, ANALYSIS AND FINDINGS

The Exchange alleged that UBS failed to properly document ECRP trade activity on a customer account statement for trade date January 26, 2015. Specifically, after reviewing UBS’ daily customer account statements for UBS client 009VIXID, CFER found that the ECRP transactions executed on January 26, 2015 were not properly labeled or identified as such. As UBS does not contest this allegation, the BCC Panel upholds the Exchange’s determination that ECRP transactions executed on January 26, 2015 were not properly labeled or identified as such on the UBS’ client’s account statements.

UBS argues, in its Answer to the Exchange’s Disciplinary Notice, that the Exchange improperly viewed the violation in this case as a second violation for purposes of imposition of a fine. UBS asserts that while the subject trade activity and failure to identify the transaction as an ECRP occurred on January 26, 2015, after the trade activity on June 24, 2014 for which UBS received a Letter of Caution, the investigation by the Exchange and the subsequent Letter of Caution were conducted and received after the January 26, 2015 violation had occurred. UBS contends that the Disciplinary Notice should be rescinded on the grounds that (1) the subject violation occurred prior to UBS being on notice that it had committed a first violation of Exchange Rule 414(f); and (2) the Letter of Caution issued on September 24, 2015 should cover any similar violation which occurred prior to that date.

UBS asserts that after the Exchange’s investigation which commenced on July 9, 2015 of the June 24, 2014 violation, UBS took the necessary steps to remediate the issue with such remediation put in place by UBS in October, 2015 which was shortly after UBS’ receipt of the September 24, 2015 Letter of Caution associated with the June 24, 2014 transaction. Prior to that, the Exchange had not taken any action against UBS. UBS argues that given the above timeline, it is not appropriate for the Exchange to consider the

January 26, 2015 transaction to be a second violation within a rolling twelve (12) month period because UBS was not on notice of a first violation until six (6) months after this violation occurred and thus could not have anticipated a finding of a second violation for activity occurring prior to that notice. UBS further argues that the Twelve (12) Month Rolling Period should begin upon receipt of the Letter of Caution as that is the moment in time when UBS was made aware of a first violation of Exchange rules. UBS contends that to begin the Twelve (12) Month Rolling Period at the time of the original transaction fails to recognize the time lapse that occurs between the actual violation date and the investigation conducted and creates the potential for ever-escalating fines based upon a subsequent look-back by the Exchange at transactions occurring prior UBS being on notice and having an opportunity to remediate. For the Exchange to treat existing similar violations as being subsequent to the Letter of Caution ignores UBS' remediation efforts.

The Exchange argues that UBS' argument that it was not on notice that it had committed the first violation of Exchange Rule 414(f) on June 24, 2014 fails as "there is no requirement in Exchange Rules, or CFTC Rules or Regulations for that matter, that require a firm to have notice of one violation, either formal or informal, before a regulator can proceed on a second, subsequent, violation." The Exchange noted and the BCC Panel also notes that UBS did not cite any such rule or regulation in its Answer and as the BCC Panel found that there is no such rule or regulation, the BCC Panel finds that UBS' argument above fails. Even if such a rule or regulation existed, the BCC Panel agrees with the Exchange assertion that Neil Mazur ("Mazur") of UBS (the signatory on UBS' Answer) was, in fact, on notice that UBS had committed the first violation as follows: On July 7, 2014, the National Futures Association ("NFA") initially requested UBS account statements; on July 28, 2014, UBS provided NFA the requested documents; on November 6, 2014, NFA emailed Mazur asking why the subject transaction was not marked as ECRP on the account statement; on November 12, 2014, Mazur responding on behalf of UBS stated that UBS was in the process of determining why "no notation appeared in the account statement"; on December 10, 2014, CFER received the case referral from NFA; on January 26, 2015, the second Exchange Rule 414(f) violation occurred; On July 30, 2015, UBS responded to CFER that it was developing a solution to remediate a mapping problem; and in October 2015, the mapping issue was resolved.

VI. IMPOSITION OF FINE FOR MINOR RULE VIOLATION

Exchange Rule 714 provides that the Exchange may impose a fine, not to exceed \$15,000, on any TPH or Related Party of a TPH with respect to any violation of the Rules of the Exchange relating to the timely submission of accurate records required for clearing or verifying each day's transactions, decorum or other similar activities. Exchange Rule 714(f)(viii) provides that a fine may be imposed by the Exchange pursuant to Exchange Rule 714 for a TPH's or Related Party of a TPH's failure to comply with Order

Marking Requirement for Exchange of Contract for Related Position Transactions (Exchange Rule 414(f)). Pursuant to this Rule, the amount of the fine to be imposed for a second offense, in any Twelve (12) Month Rolling Period is \$2,500.

The BCC Panel upholds and affirms the Exchange's determination that UBS violated Exchange Rule 414(f) on January 26, 2015. In addition, the BCC Panel finds that violations of Exchange Rule 414(f), are clearly and unambiguously set forth in Exchange Rule 714. In the Exchange's Disciplinary Notice, the Exchange sought to impose the fine of \$2,500 which is set forth in Exchange Rule 714(f)(viii) for the second offense in a Twelve (12) Month Rolling Period. In its Answer, UBS suggested that the BCC Panel rescind the Disciplinary Notice on the grounds that the subject violation occurred prior to UBS being on notice that it had committed a first violation of Exchange Rule 414(f) and thus the Letter of Caution issued on September 24, 2015 should cover any similar violation which occurred prior to that date. The BCC Panel does not find UBS' above arguments convincing and therefore declines to rescind the Exchange's Disciplinary Notice.

VII. SANCTION AND FORUM FEE

Pursuant to Exchange Rule 714(c)(ii) the BCC Panel (A) may impose any one or more of the disciplinary sanctions authorized by the Rules of the Exchange and (B) shall impose a forum fee against the Person charged in the amount of One Hundred Dollars (\$100) if the determination was reached without a hearing, or in the amount of Three Hundred Dollars if a hearing was conducted. Pursuant to Exchange Rule 7.11, the principle considerations in determining sanctions shall (i) be commensurate with the violations committed, (ii) be clearly sufficient to deter recidivism or similar violations by other market participants, and (iii) take into account the Respondent's disciplinary history.

Because UBS has contested the imposition of the Summary Fine, the BCC Panel has the ability to assess a sanction other than the \$2,500 fine that would have been assessed if the matter had been resolved under Exchange Rule 714(c)(viii). Therefore, taking into account all of the foregoing circumstances, the principle considerations stated in Exchange Rule 7.11, and in consideration of the time and expense incurred by the Exchange in this matter, the BCC Panel finds that a reasonable and appropriate sanction, for UBS' conduct as described above, is the imposition of a \$5,000 fine and the imposition of a \$100 forum fee in accordance with Exchange Rule 714(c)(ii).

ORDER

ACCORDINGLY, IT IS ORDERED THAT UBS Securities LLC shall be fined in the amount of \$5,000 and assessed a forum fee of \$100.

SO ORDERED FOR THE BCC PANEL

/s/ Richard A. Bruder

Dated: 9/16/16

Richard A. Bruder
Chairman,
CFE Business Conduct Committee Panel