

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 102171 / January 13, 2025

ADMINISTRATIVE PROCEEDING
File No. 3-22406

In the Matter of

**Santander US Capital
Markets LLC,**

Respondent.

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

I.

The Securities and Exchange Commission (“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) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Santander US Capital Markets LLC (“Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Respondent admits the facts set forth in Section III 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) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

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

Summary

1. The federal securities laws impose recordkeeping requirements on broker-dealers to ensure that they responsibly discharge their crucial role in our markets. The Commission has

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

long said that compliance with these requirements is essential to investor protection and the Commission's efforts to further its mandate of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

2. These proceedings arise out of the failure of Respondent's personnel, including at senior levels, to adhere to certain of these essential requirements and Respondent's own policies and procedures. Using their personal devices, these employees communicated both internally and externally by text messages and/or other unapproved written communications platforms, such as WhatsApp ("off-channel communications").

3. From at least January 2021 (the "Relevant Period"), Respondent's personnel sent and received off-channel communications that related to its broker-dealer business. Respondent did not maintain or preserve the substantial majority of these written communications. Respondent's failure involved personnel at various levels of authority and in multiple business teams. As a result, Respondent violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder.

4. Respondent's supervisors, who were responsible for supervising junior personnel, routinely communicated off-channel using their personal devices. In fact, senior executives responsible for supervising junior personnel themselves failed to comply with Respondent's policies and procedures by communicating through non-approved methods on their personal devices about Respondent's broker-dealer business.

5. Respondent's failure to implement its policies and procedures that prohibit such communications led to its failure to reasonably supervise its personnel within the meaning of Section 15(b)(4)(E) of the Exchange Act.

6. The Commission staff found Respondent's recordkeeping failures after commencing a risk-based initiative to investigate the use of off-channel and unpreserved communications at broker-dealers. Respondent has initiated a review of its recordkeeping failures and begun a program of remediation.

Respondent

7. Respondent is a Delaware limited liability company with its principal place of business in New York, New York. Since December 2009, Respondent has been registered with the Commission as a broker-dealer. Respondent is an indirect subsidiary of Santander Holdings USA, Inc., an intermediate holding company for US businesses, and wholly owned subsidiary of Banco Santander, S.A., a Spain-based financial services company.

Recordkeeping Requirements Under the Exchange Act

8. Section 17(a)(1) of the Exchange Act authorizes the Commission to issue rules requiring broker-dealers to make and keep for prescribed periods, and furnish copies of, such records as necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Exchange Act.

9. The Commission adopted Rule 17a-4 under the Exchange Act pursuant to this authority. Rule 17a-4 specifies the manner and length of time that the records made in accordance with other Commission rules, and certain other records made by broker-dealers, must be maintained and produced promptly to Commission representatives.

10. The rules adopted under Section 17(a)(1) of the Exchange Act, including Rule 17a-4(b)(4), require that broker-dealers preserve for at least three years, the first two years in an easily accessible place, originals of all communications received and copies of all communications sent relating to the broker-dealer's business as such. These rules impose minimum recordkeeping requirements that are based on standards a prudent broker-dealer should follow in the normal course of business.

11. The Commission previously has stated that these and other recordkeeping requirements "are an integral part of the investor protection function of the Commission, and other securities regulators, in that the preserved records are the primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards." Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f), 17 C.F.R. Part 241, Exchange Act Rel. No. 44238 (May 1, 2001).

Respondent's Policies and Procedures

12. Respondent maintained certain policies and procedures designed to ensure the retention of business-related records, including electronic communications, in compliance with the relevant recordkeeping provisions.

13. Respondent personnel were advised that the use of unapproved electronic communications methods, including on their personal devices, was not permitted, and they should not use personal email, chats, or text messaging applications for business purposes, or forward work-related communications to unapproved applications on their personal devices.

14. Messages sent through firm-approved communications methods were monitored, subject to review, and archived. Messages sent through unapproved communications methods, such as WhatsApp on personal devices, were not monitored, subject to review, or archived.

15. Respondent conducted trainings for its personnel, which were designed to address the firm's supervision of its personnel and adherence to Respondent's books and recordkeeping requirements. Supervisory policies notified personnel that electronic communications were subject to surveillance by Respondent. Respondent had procedures for all personnel, including supervisors, requiring annual self-attestations of compliance.

16. Respondent failed to implement a system reasonably expected to determine whether all personnel, including supervisors, were following the firm's policies and procedures. While permitting personnel to use approved communications methods, including on personal phones, for business communications, Respondent failed to implement sufficient monitoring to ensure that its recordkeeping and communications policies were being followed.

Respondent's Recordkeeping Failures Across Its Brokerage Business

17. In September 2021, the Commission staff commenced a risk-based initiative to investigate whether broker-dealers were properly retaining business-related messages sent and received on personal devices. Respondent cooperated with the investigation by voluntarily interviewing a sampling of senior personnel and gathering and reviewing messages found on the individuals' personal devices. These personnel included senior leadership, such as senior executives, senior managing directors, and managing directors.

18. The Commission staff's investigation found off-channel communications at various senior levels within Respondent. The investigation determined that nearly all its personnel sampled had engaged in at least some level of off-channel communications.

19. Overall, personnel sent and received numerous off-channel communications involving other personnel, Respondent's brokerage customers, and/or other participants in the securities industry. Within Respondent, certain senior personnel participated in off-channel communications.

20. During the Relevant Period, Respondent personnel sent and received off-channel messages that concerned the firm's broker-dealer business.

21. For example, an executive officer exchanged off-channel business-related text messages with at least four colleagues, three of whom were supervised by the executive officer and were heads of other groups. These messages related to the broker-dealer's business as such.

22. In addition, a senior managing director and head of a group exchanged off-channel business-related messages with at least 10 colleagues, five of whom were supervised by this managing director and head of a group; seven customers, investors, or other market participants; and at least five individuals at another financial firm. These messages related to the broker-dealer's business as such.

23. Furthermore, a product specialist exchanged off-channel business-related text messages with at least two colleagues. These messages related to the broker-dealer's business as such.

Respondent's Violations and Failure to Supervise

24. As a result of the conduct described above, Respondent willfully² violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder.

25. As a result of the conduct described above, Respondent failed reasonably to supervise its personnel with a view to preventing or detecting certain of its personnel's aiding

² "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act, "means no more than 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)).

and abetting violations of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, within the meaning of Section 15(b)(4)(E) of the Exchange Act.

Respondent's Efforts to Comply

26. In determining to accept the Offer, the Commission considered Respondent's cooperation as well as remedial steps that Respondent undertook both before and after being approached by the Commission staff. Prior to this action, Respondent commenced an internal review into the possible use of off-channel communications, informed the Commission of the findings of the review, enhanced its policies and procedures, increased training concerning the use of approved communications methods, including on personal devices, and began implementing significant changes to the technology available to personnel.

Undertakings

Respondent has undertaken to:

27. **Internal Audit.** Within two hundred seventy (270) days of the entry of this Order, shall require that its Internal Audit function conduct a separate audit(s) consisting of the following:

a. A comprehensive review of Respondent's supervisory, compliance, and other policies and procedures designed to ensure that Respondent's electronic communications, including those found on personal electronic devices, including without limitation, cellular phones ("Personal Devices"), are preserved in accordance with the requirements of the federal securities laws.

b. A comprehensive review of training conducted by Respondent to ensure personnel are complying with the requirements regarding the preservation of electronic communications, including those found on Personal Devices, in accordance with the requirements of the federal securities laws, including by ensuring that Respondent's personnel certify in writing on a quarterly basis that they are complying with preservation requirements.

c. An assessment of the surveillance program measures implemented by Respondent to ensure compliance, on an ongoing basis, with the requirements found in the federal securities laws to preserve electronic communications, including those found on Personal Devices.

d. An assessment of the technological solutions that Respondent has begun implementing to meet the record retention requirements of the federal securities laws, including an assessment of the likelihood that Respondent's personnel will use the technological solutions going forward and a review of the measures employed by Respondent to track employee usage of new technological solutions.

e. An assessment of the measures used by Respondent to prevent the use of unauthorized communications methods for business communications by personnel. This assessment should include, but not be limited to, a review of Respondent's policies and procedures to ascertain if they provide for any significant technology and/or behavioral restrictions that help prevent the risk of the use of unapproved communications methods on Personal Devices (*e.g.*, trading floor restrictions).

f. A review of Respondent's electronic communications surveillance routines to ensure that electronic communications through approved communications methods found on Personal Devices are incorporated into Respondent's overall communications surveillance program.

g. A comprehensive review of the framework adopted by Respondent to address instances of non-compliance by Respondent's personnel with Respondent's policies and procedures concerning the use of Personal Devices to communicate about Respondent's business in the past. This review shall include a survey of how Respondent determined which personnel failed to comply with Respondent's policies and procedures, the corrective action carried out, an evaluation of who violated the policies and procedures and why, what penalties were imposed, and whether penalties were handed out consistently across business lines and seniority levels.

28. Recordkeeping. Respondent shall preserve, for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of compliance with these undertakings.

29. Certification. Respondent shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Alison R. Levine, Assistant Regional Director, Division of Enforcement, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY, 10004-2616, or such other person as the Commission staff may request, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

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) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder.

B. Respondent is censured.

C. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$4,000,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). 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 Santander US Capital Markets LLC as the 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 Thomas P. Smith, Jr., Associate Regional Director, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, New York 10004-2616.

E. The amount ordered to be paid as a civil money penalty pursuant to this Order shall be treated as a penalty paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action"

means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary