

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98654 / September 29, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21776

In the Matter of

**Kroll Bond Rating Agency,
LLC**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15E(d) 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, in the public interest and for the protection of investors that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15E(d) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Kroll Bond Rating Agency, LLC (“KBRA” or “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 15E(d) 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:

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.

Summary

1. Nationally recognized statistical rating organizations (“NRSROs”) and the credit ratings they issue play a unique and important role in our financial markets. The federal securities laws impose recordkeeping requirements on NRSROs to establish a framework of oversight to ensure that NRSROs responsibly discharge their role. The Commission has long said that recordkeeping requirements have proven integral to the Commission’s investor protection function because preserved records are the primary means of monitoring compliance with applicable federal securities laws.

2. These proceedings arise out of widespread and longstanding failures by KBRA, an NRSRO, to adhere to certain NRSRO recordkeeping requirements. KBRA employees, including those at senior levels, have communicated using their own personal devices by text messages or other text messaging platforms, such as WhatsApp, since at least January 2020, both internally and externally (“off-channel communications”). The text messages included discussions of initiating, determining, maintaining, monitoring, changing, or withdrawing credit ratings (“credit rating activities”).

3. KBRA failed to maintain or preserve messages concerning rating activities as required by NRSRO recordkeeping rules. Respondent’s failure was firm-wide and involved employees at all levels of seniority. As a result, KBRA violated Section 17(a) of the Exchange Act and Rule 17g-2(b)(7) thereunder.

4. During the time period that KBRA failed to maintain and preserve off-channel communications their employees sent and received relating to credit rating activities, KBRA received and responded to Commission requests for documents in numerous Commission investigations and examinations. As a result, KBRA’s recordkeeping failures likely impacted the Commission’s ability to carry out its regulatory functions and investigate compliance deficiencies and violations of the federal securities laws across these investigations and examinations.

5. KBRA has initiated a review of its recordkeeping failures and begun a program of remediation. As set forth in the Undertakings below, KBRA will retain an independent compliance consultant to review and assess KBRA’s remedial steps relating to KBRA’s recordkeeping practices, policies and procedures, related supervisory practices, and employment actions.

Respondent

6. KBRA (formerly known as Lace Financial Corp.) is a privately owned Delaware Limited Liability Company with its principal office in New York, New York. KBRA is registered with the Commission as an NRSRO.

NRSRO Recordkeeping Requirements

7. Section 17(a)(1) of the Exchange Act authorizes the Commission to issue rules requiring NRSROs 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.

8. Pursuant to this provision, the Commission adopted recordkeeping requirements specific to NRSROs. Those requirements include, among other provisions, Exchange Act Rule 17g-2(b)(7), which requires an NRSRO to retain internal and external communications, including electronic communications, received and sent by the NRSRO and its employees that relate to credit rating activities. Rule 17g-2(c) specifies that this recordkeeping requirement applies for a period of three years.

9. In adopting Rule 17g-2 in 2007, the Commission emphasized the importance of analogous recordkeeping requirements, stating, “the retention of written communications has played an important role in assisting the Commission in identifying legal violations and compliance issues with respect to other regulated entities.” *Final Rule, Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations*, 72 Fed. Reg. 33563, 33588 (June 18, 2007). The Commission also specifically emphasized the evidentiary relevance of internal NRSRO records, stating that “internal communications will play an important role in assisting the Commission in identifying legal violations and compliance issues in its oversight of NRSROs.” *Id.*

KBRA’s Electronic Communications Policies and Procedures

10. Since at least 2018 and through the present, KBRA issued firm cell phones, but it also permitted employees to use their own personal cell phones for business purposes, including accessing work email.

11. Since at least August 2018, KBRA has maintained a Recordkeeping Policy identifying the types of written and electronic records retained by KBRA. The Recordkeeping Policy states that KBRA will retain, for at least seven years, external and internal communications received by KBRA and its employees that relate to credit rating activities.

12. Since at least October 2020, KBRA has maintained a Record Retention Policy for Credit Rating Services and a Record Retention Procedure for Credit Rating Services (the “Record Retention Policy and Procedure.”) The Record Retention Policy and Procedure acknowledges that KBRA is legally required to retain written and electronic records relating to credit rating activities and sets forth a protocol for determining which records, including electronic communications, must be retained by law.

13. However, prior to April 2022, KBRA had no policies or procedures designating the specific communications platforms that KBRA employees could or could not use to conduct business, including credit rating activities. In April 2022, KBRA enacted an Electronic Communications Concerning Credit Rating Activities Policy and Procedure (the “Electronic Communications Policy”). The Electronic Communications Policy recognizes that KBRA is legally required to retain electronic communications sent or received by KBRA employees that

relate to credit rating activities. The Electronic Communications Policy mandates that KBRA's official email system is the only electronic communications system that KBRA employees are permitted to use for credit rating activities.

14. In May 2023, KBRA amended the Electronics Communication Policy to also permit KBRA employees to send and receive messages relating to credit rating activities over the Slack communications platform, which KBRA made available to employees, both on firm-issued and personal devices, as a preserved communications platform.

15. Since at least January 2018, KBRA has maintained a Compliance Department Monitoring Process to monitor employee email for compliance with applicable laws, regulations, and KBRA policies and procedures. To this day, however, the Compliance Department Monitoring Process is limited to employees' business emails and does not cover other forms of electronic communications, such as text messaging, WhatsApp, or Slack messages.

KBRA's Recordkeeping Failures

16. KBRA employees involved in determining credit ratings, including those at senior levels, have communicated internally for purposes relating to credit rating activities using text and WhatsApp messages since at least January 2020, which were not retained or monitored by KBRA.

17. In March 2023, Commission staff commenced an investigation to determine whether KBRA was properly retaining messages relating to credit rating activities that were sent and received on personal or work-issued devices. KBRA cooperated with the investigation by voluntarily gathering and reviewing communications from the devices of a sampling of employees, including senior executives and group heads.

18. The Commission staff's investigation uncovered pervasive off-channel communications relating to credit rating activities at all seniority levels of KBRA's credit rating business. The staff requested off-channel communications data from various KBRA personnel and found that all of these individuals had engaged in off-channel communications relating to credit rating activities over a multi-year period. Overall, these personnel sent and received numerous off-channel communications relating to credit rating activities, involving other KBRA personnel and a credit rating customer.

19. The majority of the messages were exchanged on employees' personal cell phones, with some containing snapshots of internal KBRA documents and communications, such as a spreadsheet analyzing a specific transaction. Other messages were exchanged on KBRA-issued cell phones.

20. For example, from November 9, 2021 to March 3, 2022, a senior executive exchanged numerous off-channel communications relating to credit rating activities with at least five KBRA colleagues, including several group heads and other senior employees.

21. As another example, from November 9, 2021 to September 9, 2022, a senior managing director exchanged numerous off-channel communications relating to credit rating activities with at least eleven KBRA colleagues, including group heads, as well as senior and junior employees under their supervision. Some of these messages discussed the need to issue a correction regarding a ratings error in a KBRA-published report.

22. In addition, from December 7, 2021 to March 5, 2022, a senior managing director exchanged numerous off-channel communications relating to credit rating activities with at least five KBRA colleagues, including group heads and senior employees.

23. Even after KBRA instituted the Electronics Communication Policy in April 2022—which mandated that employees are only permitted to use KBRA’s official email system for credit rating activities—KBRA employees continued to send and receive messages relating to credit rating activities through other communications systems which were not retained, in violation of both KBRA’s internal policies and the recordkeeping requirements applicable to NRSROs.

24. Between January 2020 and the present, KBRA received and responded to Commission requests for documents and was subject to annual examinations by the Commission’s Office of Credit Ratings, in which it was requested to produce documents and records to assist the Commission staff with identifying potential compliance deficiencies and violations of the federal securities laws. By failing to maintain and preserve required records relating to its credit rating activities, KBRA likely deprived the Commission of these off-channel communications in various investigations and during examinations.

KBRA’s Violation

25. As a result of the conduct described above, KBRA willfully² violated Section 17(a)(1) of the Exchange Act and Rule 17g-2(b)(7) thereunder, which requires each NRSRO, for a period of three years, to retain internal and external communications, including electronic communications, received and sent by the NRSRO and its employees that relate to initiating, determining, maintaining, monitoring, changing, or withdrawing a credit rating.

² “Willfully,” for purposes of imposing relief under Section 15E(d) 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)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has “willfully omit[ted]” material information from a required disclosure in violation of Section 207 of the Investment Advisers Act of 1940).

KBRA's Remedial Efforts

26. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by KBRA and cooperation afforded the Commission staff. In April 2022, prior to being contacted by Commission staff, KBRA enacted the Electronic Communications Policy to comply with NRSRO recordkeeping requirements. In May 2023, KBRA deployed Slack as an additional communications platform and amended the Electronics Communications Policy accordingly.

Undertakings

27. As discussed, prior to this action, KBRA enacted the Electronic Communications Policy, enhanced its training on approved business communications methods, made significant changes to technology available to employees, and began implementing technologies to facilitate compliance with NRSRO recordkeeping requirements, including on personal devices. In addition, KBRA has undertaken to do the following:

28. **Independent Compliance Consultant.**

a. KBRA shall retain, within thirty (30) days of the entry of this Order, the services of an independent compliance consultant ("Compliance Consultant") that is not unacceptable to the Commission staff. The Compliance Consultant's compensation and expenses shall be borne exclusively by KBRA.

b. KBRA will oversee the work of the Compliance Consultant.

c. KBRA shall provide to the Commission staff, within sixty (60) days of the entry of this Order, a copy of the engagement letter detailing the Compliance Consultant's responsibilities, which shall include a comprehensive compliance review as described below. KBRA shall require that, within ninety (90) days of the date of the engagement letter, the Compliance Consultant conduct:

- i. A comprehensive review of KBRA's supervisory, compliance, and other policies and procedures designed to ensure that internal and external communications, including electronic communications, received and sent by KBRA and its employees that relate to credit rating activities are preserved in accordance with the requirements of the federal securities laws and NRSRO regulations and an assessment of KBRA's framework for addressing instances of non-compliance among its employees.
- ii. A comprehensive review of training conducted by KBRA to ensure personnel are complying with the requirements regarding the preservation of communications relating to credit rating activities,

including those found on personal devices, in accordance with the federal securities laws and NRSRO regulations.

- iii. An assessment of any surveillance measures implemented by KBRA to ensure compliance, on an ongoing basis, with the requirements regarding the preservation of communications relating to credit rating activities, including those found on personal devices, in accordance with the federal securities laws and NRSRO regulations.
- iv. An assessment of the technological solutions that KBRA has begun implementing to facilitate compliance with the requirements regarding the preservation of communications relating to credit rating activities in accordance with the federal securities laws and NRSRO regulations, including an assessment of the likelihood that KBRA personnel will use the technological solutions going forward and a review of the measures employed by KBRA to track employee usage of new technological solutions.
- v. An assessment of the measures used by KBRA to prevent the use of unauthorized communications methods for communications relating to credit rating activities by employees. This assessment should include, but not be limited to, a review of the firm'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 to send or receive communications relating to credit rating activities in contravention of the requirements of the federal securities laws and NRSRO regulations.
- vi. A review of KBRA's electronic communications surveillance routines to ensure the preservation of electronic communications relating to credit rating activities, including those found on personal devices, in accordance with the federal securities laws and NRSRO regulations, are incorporated into KBRA's overall communications surveillance program.
- vii. A comprehensive review of the framework adopted by KBRA to address instances of non-compliance by KBRA personnel with KBRA's policies and procedures concerning the use of approved communications methods, including on personal devices, for communications relating to credit rating activities in accordance with the federal securities laws and NRSRO regulations in the past. This review shall include a survey of how KBRA determined which employees failed to comply with KBRA policies and procedures, the

corrective action carried out, an evaluation of who violated policies and why, what penalties were imposed, and whether penalties were handed out consistently across business lines and seniority levels.

d. KBRA shall require that, within forty-five (45) days after completion of the review set forth in sub-paragraphs c.i through c.vii above, the Compliance Consultant shall submit a detailed written report of its findings to KBRA and to the Commission staff (the "Report"). KBRA shall require that the Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Compliance Consultant's recommendations for changes in or improvements to KBRA's policies and procedures, and a summary of the plan for implementing the recommended changes in or improvements to KBRA's policies and procedures.

e. KBRA shall adopt all recommendations contained in the Report within ninety (90) days of the date of the Report; provided, however, that within forty-five (45) days after the date of the Report, KBRA shall advise the Compliance Consultant and the Commission staff in writing of any recommendations that KBRA considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that KBRA considers unduly burdensome, impractical, or inappropriate, KBRA need not adopt such recommendation at that time, but shall propose in writing an alternative policy, procedure, or disclosure designed to achieve the same objective or purpose.

f. As to any recommendation concerning KBRA's policies or procedures on which KBRA and the Compliance Consultant do not agree, KBRA and the Compliance Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by KBRA and the Compliance Consultant, KBRA shall require that the Compliance Consultant inform KBRA and the Commission staff in writing of the Compliance Consultant's final determination concerning any recommendation that KBRA considers to be unduly burdensome, impractical, or inappropriate. KBRA shall abide by the determinations of the Compliance Consultant and, within sixty (60) days after final agreement between KBRA and the Compliance Consultant or final determination by the Compliance Consultant, whichever occurs first, KBRA shall adopt and implement all of the recommendations that the Compliance Consultant deems appropriate.

g. KBRA shall cooperate fully with the Compliance Consultant and shall provide the Compliance Consultant with access to such of KBRA's files, books, records, and personnel as are reasonably requested by the Compliance Consultant for review.

h. KBRA shall not have the authority to terminate the Compliance Consultant or substitute another compliance consultant for the initial Compliance Consultant, without the prior written approval of the Commission staff. KBRA shall compensate the

Compliance Consultant and persons engaged to assist the Compliance Consultant for services rendered under this Order at their reasonable and customary rates.

i. For the period of engagement and for a period of two years from completion of the engagement, KBRA shall not (i) retain the Compliance Consultant for any other professional services outside of the services described in this Order; (ii) enter into any other professional relationship with the Compliance Consultant, including any employment, consultant, attorney-client, auditing or other professional relationship; or (iii) enter, without prior written consent of the Commission staff, into any such professional relationship with any of the Compliance Consultant's present or former affiliates, employers, directors, officers, employees, or agents acting in their capacity as such.

j. The Report and related written communications of the Compliance Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the Report could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the Report and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) is otherwise required by law.

29. One-Year Evaluation. KBRA shall require the Compliance Consultant to assess KBRA's program for the preservation, as required under the federal securities laws and NRSRO regulations, of communications relating to credit rating activities, including those found on personal devices, commencing one year after submitting the Report required by Paragraph 28.d above. KBRA shall require this review to evaluate KBRA's progress in the areas described in Paragraphs 28.c.i-vii above. After this review, KBRA shall require the Compliance Consultant to submit a report (the "One Year Report") to KBRA and the Commission staff and shall ensure that the One Year Report includes an updated assessment of KBRA's policies and procedures with regard to the preservation of communications relating to credit rating activities (including those found on personal devices), training, surveillance programs, and technological solutions implemented in the prior year period.

30. Reporting Discipline Imposed. For two years following the entry of this Order, KBRA shall notify the Commission staff as follows upon the imposition of any discipline imposed by KBRA, including, but not limited to, written warnings, loss of any pay, bonus, or incentive compensation, or the termination of employment, with respect to any employee found to have violated KBRA's policies and procedures concerning the preservation of communications relating to credit rating activities, including those found on personal devices: within ten (10) days of the imposition of such discipline.

31. Recordkeeping. KBRA 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.

32. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates related to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

33. Certification. KBRA 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 Judith Weinstock, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, New York 10004-2616, 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, in the public interest, and for the protection of investors to impose the sanctions agreed to in Respondent KBRA's Offer.

Accordingly, pursuant to Sections 15E(d) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent KBRA cease and desist from committing or causing any violations and any future violations of Section 17(a)(1) of the Exchange Act and Rule 17g-2(b)(7) thereunder.

B. Respondent KBRA is censured.

C. Respondent KBRA shall pay civil penalties 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). Payment shall be made in the following installments:

1. Due within 30 days of the entry of this Order: \$600,000;
2. Due within 90 days of the entry of this Order: \$425,000;
3. Due within 180 days of the entry of this Order: \$425,000;
4. Due within 270 days of the entry of this Order: \$425,000;
5. Due within 360 days of the entry of this Order: \$425,000;
6. Due within 450 days of the entry of this Order: \$425,000;
7. Due within 540 days of the entry of this Order: \$425,000;
8. Due within 630 days of the entry of this Order: \$425,000; and

9. The remainder within 720 days after the entry of this Order.

Payments shall be applied first to post-order interest, which accrues pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

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 KBRA 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 Sheldon Pollock, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, New York 10004-2626.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties 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.

E. Respondent shall comply with the undertakings enumerated in Section III above.

By the Commission.

Vanessa A. Countryman
Secretary