

FINRA

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20080151616-01**

2012 MAR 23 PM 1:38

TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: UBS Financial Services Inc., Respondent
Broker-Dealer
CRD No. 8174

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, UBS Financial Services Inc. (the "firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

The firm has been a member of FINRA since October 13, 1936, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

On February 26, 2008, an AWC was accepted in which the firm was fined \$110,000, \$10,000 of which related to violations of NASD Rule 6955 for violations occurring on trade dates October 4-5, 2005 (20041000031).

FACTS AND VIOLATIVE CONDUCT

On September 17, 2008, the Securities and Exchange Commission ("SEC"), through emergency order, adopted Rule 204T of Regulation SHO, which imposed enhanced delivery requirements on sales of all equity securities.

In Market Regulation Review No. 20080151616, the Short Sale Section of the Department of Market Regulation conducted a review of the firm's compliance with SEC Rule 204T of Reg SHO for the period September 26, 2008 through October 2, 2008.

1. Beginning on September 26, 2008 and continuing through October 2, 2008, the firm had a fail to deliver position at a registered clearing agency in an equity security, Invesco Plc, that resulted from long sales, and failed to immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement dates for the sale transactions (*i.e.*, T+6). The conduct described in this paragraph constitutes violations of SEC Rule 204T(a)(1) of Regulation SHO.

In Market Regulation Review No. 20080156103, the Options Regulation Section of the Department of Market Regulation conducted a review of the firm's compliance with SEC Rule 204T of Reg SHO for the period September 26, 2008 through October 3, 2008.

2. Beginning on September 26, 2008 and continuing through October 3, 2008, the firm had a fail to deliver position at a registered clearing agency in an equity security, Frontier Development Group, that resulted from long sales, and failed to immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement dates for the sale transactions. The conduct described in this paragraph constitutes violations of SEC Rule 204T(a)(1) of Regulation SHO.
3. Beginning on September 26, 2008 and continuing through October 3, 2008, the firm had a fail to deliver position at a registered clearing agency in an equity security, Crystallex International Corp., that resulted from a long sale, and failed to immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date for the sale transaction. The conduct described in this paragraph constitutes a violation of SEC Rule 204T(a)(1) of Regulation SHO.

In Market Regulation Review No. 20090172468, the Short Sale Section of the Department of Market Regulation conducted a review of the firm's compliance with SEC Rule 204T of Reg SHO for the period September 29, 2008 through March 19, 2009.

4. Beginning on October 31, 2008 and continuing through December 30, 2008, the firm had a fail to deliver position at a registered clearing agency in an equity security, Borland Software Corporation, that resulted from long sales, and failed to immediately thereafter close out the fail to deliver

position by purchasing securities of like kind and quantity no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement dates for the sale transactions. The conduct described in this paragraph constitutes violations of SEC Rule 204T(a)(1) of Regulation SHO.

5. Beginning on October 29, 2008 and continuing through January 23, 2009, the firm had a fail to deliver position at a registered clearing agency in an equity security, Tanzanian Royalty Exploration Corp., that resulted from long sales, and failed to immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement dates for the sale transactions. The conduct described in this paragraph constitutes violations of SEC Rule 204T(a)(1) of Regulation SHO.
6. Beginning on October 29, 2008 and continuing through December 16, 2008, the firm had a fail to deliver position at a registered clearing agency in an equity security, Citigroup Capital VIII 6.95% Trust Pfd Secs TRUPS due 9/15/2031 ("C\$Z"), that resulted from long sales, and failed to immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement dates for the sale transactions. The conduct described in this paragraph constitutes violations of SEC Rule 204T(a)(1) of Regulation SHO.
7. Beginning on October 15, 2008, and continuing through January 27, 2009, the firm had a fail to deliver position at a registered clearing agency in an equity security, HepaLife Technologies, Inc., that resulted from long sales, and failed to immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement dates for the sale transactions. The conduct described in this paragraph constitutes violations of SEC Rule 204T(a)(1) of Regulation SHO.
8. From September 29, 2008 through October 20, 2008 and from October 27, 2008 through March 19, 2009, the firm had a fail to deliver position at a registered clearing agency in an equity security, Media Logic, Inc., that resulted from long sales, and failed to immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement dates for the sale transactions. The conduct described in this paragraph constitutes violations of SEC Rule 204T(a)(1) of Regulation SHO.

In Market Regulation Review No. 20090188945, the Short Sale Section of the Department of Market Regulation conducted a review of the firm's compliance with SEC Rule 204T of Reg SHO for the period October 24, 2008 through July 31, 2009.

9. Beginning on October 24, 2008 and continuing through July 31, 2009, the firm had a fail to deliver position at a registered clearing agency in an equity security, Sykes Datatronics Inc., that resulted from long sales, and failed to immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement dates for the sale transactions. The conduct described in this paragraph constitutes violations of SEC Rule 204T of Regulation SHO(a)(1).
10. Beginning on November 6, 2008 and continuing through July 31, 2009, the firm had a fail to deliver position at a registered clearing agency in an equity security, Etolos Inc., that resulted from a short sale, and failed to immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity no later than the beginning of regular trading hours on the next consecutive settlement day following the settlement date for the short sale transaction (*i.e.*, T+4). The conduct described in this paragraph constitutes a violation of SEC Rule 204T(a) of Regulation SHO.

In Market Regulation Review No. 20080153496, the Short Sale Section of the Department of Market Regulation conducted a review of the firm's compliance with SEC Rule 204T of Reg SHO for the period September 29, 2008 through October 8, 2008.

11. During the review period, the firm transmitted to the Order Audit Trail System 90 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports contained inaccurate buy/sell order designations. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).
12. The firm failed to report to the OTC Reporting Facility the correct symbol indicating whether the transaction was a buy, sell, sell short, or cross for 73 transactions in Reportable Securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6130(d)(6).

- B. The firm also consents to the imposition of the following sanctions:

A censure and fine of \$167,500, consisting of:

\$9,000 for violations of SEC Rule 204T(a)(1) in Review No. 20080151616;

\$12,500 for violations of SEC Rule 204T(a)(1) in Review No. 20080156103;

\$85,500 for violations of SEC Rule 204T(a)(1) in Review No. 20090172468;

\$37,500 for violations of SEC Rule 204T(a) and (a)(1) in Review No. 20090188945; and

\$15,000 for violations of NASD Rule 6955 and \$8,000 for violations of NASD Rule 6130(d)(6) in Review No. 20080153496.

The firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that payment is due and payable. The firm has submitted an Election of Payment form showing the method by which the firm proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that the firm is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the firm;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

The firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
 - 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. The firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The firm may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

3/22/12

Date

Respondent

UBS Financial Services Inc.

By: [Signature]

Name: Kerry Zin

Title: Executive Director / Assoc. Gen Counsel

Reviewed by:

Attorney Name

Counsel for Respondent

Firm Name

Address

City/State/Zip

Phone Number

Accepted by FINRA:

6/1/12

Date

Signed on behalf of the

Director of ODA, by delegated authority

[Signature]

Thomas R. Gira

Executive Vice President

Department of Market Regulation