

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 20120316413-01**

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

RE: UBS Securities LLC, Respondent  
Broker-Dealer  
CRD No. 7654

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, UBS Securities LLC (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 August 17, 1978, and its registration remains in effect.

**RELEVANT DISCIPLINARY HISTORY**

On Jan. 20, 2010, FINRA accepted an AWC in which the firm was censured and fined \$60,000 of which unspecified portions concerned, among other things, violations of Rule 605 of Regulation NMS, NASD Rule 6955 with respect to OATS reporting, NASD Rule 6130(d) concerning trade reporting and NASD Rules 3010 and 2110 for failing to document supervisory reviews for OATS reporting from an examination review period of July 8, 2008.

On March 15, 2010, a New York Stock Exchange LLC Hearing Board accepted a Stipulation and Consent in which the firm was censured and fined \$350,000 for certain floor trading, trade reporting, recordkeeping and supervisory violations from January 1, 2005 through December 31, 2008.

On June 24, 2011, FINRA accepted an AWC in which the firm was censured and fined \$42,500 of which \$37,500 related to combined Order Audit Trail System ("OATS") reporting violations from two reviews concerning the third quarter 2008 and the period from Feb. 4, 2008 through July 31, 2010, and \$5,000 concerned related supervisory findings.

On Oct. 24, 2011, FINRA accepted an AWC in which the firm was censured and fined \$12 million for issues primarily relating to Regulation SHO. An unspecified portion of that fine related to trade reporting violations under NASD Rule 6130 and FINRA Rules 7230A and 7330, as well as OATS reporting violations under NASD Rule 6955 and FINRA Rule 7450 associated with mismarking of sales orders as long or short, and related supervisory findings, from January 2005 through at least the end of 2010.

### **FACTS AND VIOLATIVE CONDUCT**

In Trading and Market Making Surveillance Examination No. 20120316413, the staff of FINRA's Department of Market Regulation ("staff") reviewed the trading activity of the firm for compliance with various regulatory requirements set forth in Exhibit 1 for trade date Oct. 11, 2012 (the "review period"), unless otherwise noted.

In connection with Examination No. 20120316413,

1. The firm transmitted OATS reports concerning 35 orders that contained inaccurate, incomplete, or improperly formatted data. Specifically, the firm: (a) omitted the "NH" Special Handling Code and submitted an incorrect "CSH" Special Handling Code concerning cash settlements for 15 orders (and submitted an incorrect Account Type Code for six of those orders), (b) omitted the "OPT" Special Handling Code for options-related transactions for four orders, (c) submitted an incorrect "CSH" Special Handling Code for three orders (and submitted an incorrect Account Type Code for one of those orders), (d) submitted unnecessary Execution Reports for seven orders routed to an exchange, (e) failed to submit Execution Reports for agency trades on nine occasions for five orders (and failed to submit an "NH" Special Handling Code and submitted an incorrect CSH Special Handling Code for four of those orders and failed to submit an ADD Special Handling Code for another of those orders), and (f) failed to update the "Firm Order ID" on all reportable events following the cancellation and replacement of an order. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.

2. For the month of July 2012, the firm made available a report on the covered orders in national market system securities that it received for execution from any person. This report included incorrect information as to total covered shares, total canceled shares, market center executed shares, away executed shares, shares executed from 0-9 seconds, average realized spread, average effective spread, outside the quote shares, outside the quote average amount, outside the quote average time, price improved shares, price improved average amount, at the quote shares, at the quote average and/or total covered orders with respect to three order/size type categories. The conduct described in this paragraph constitutes a violation of Rule 605 of Regulation NMS.
3. The firm failed to report the correct Related Market Center Code ("RMMC") to the FINRA/Nasdaq Trade Reporting Facility ("FNTRF") on 68 last sale reports of designated securities. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7230A.
4. The firm failed to report the correct RMMC to the OTC Reporting Facility ("OTCRF") on 106 last sale reports of transactions in OTC Equity Securities. The firm also failed to report the correct Market Participant ID on 15 last reports of transactions in OTC Equity Securities. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7330.
5. In six instances, the firm incorrectly submitted to the OTCRF a clearing-only or non-tape, non-clearing report, because the firm incorrectly designated six transactions in OTC Equity Securities as offsetting, "riskless" portions of "riskless" principal transactions when the transactions should have been media reported as principal transactions instead. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6622.
6. The firm incorrectly reported a trade reporting modifier to the FNTRF related to derivatively priced transactions for three orders (and incorrectly reported a "B" modifier as to one of those orders). In addition, on three occasions, the firm incorrectly submitted to the FNTRF a clearing-only or non-tape, non-clearing report, because the firm incorrectly designated three transactions in designated securities as offsetting, "riskless" portions of "riskless" principal transactions when the transactions should have been media reported as principal transactions instead. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6380A.
7. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and the Rules of FINRA. At a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:

- (a) specific identification of the individual(s) responsible for supervision;
- (b) the supervisory steps and reviews to be taken by the appropriate supervisor;
- (c) the frequency of such reviews; and
- (d) how such reviews shall be documented.

The firm's written supervisory procedures failed to provide for one or more of the four above-cited minimum requirements for adequate written supervisory procedures, in the following subject areas: (1) Rule 605 of Regulation NMS [(b)]; (2) OATS accuracy [(b)]; and (3) Multiple Market Participant ID Usage [(b)]. The conduct described in this paragraph constitutes violations of NASD Rule 3010 and FINRA Rule 2010.

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

**A censure, a fine of \$75,000 (consisting of \$22,500 for the OATS findings, \$22,500 for the Rule 605 findings, \$20,000 for the combined trade reporting violations, including \$10,000 for the trade reporting to the FNTRF and \$10,000 for the trade reporting to the OTCRF, and \$10,000 for the combined supervisory findings), and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph I.A.7 above. Within 30 business days of acceptance of this AWC by the National Adjudicatory Council ("NAC"), a registered principal of the Respondent shall submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, a signed, dated letter, or an e-mail from a work-related account of the registered principal to [MarketRegulationComp@finra.org](mailto:MarketRegulationComp@finra.org), providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraph I.A.7; and, (3) the date the revised procedures were implemented.**

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) 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 Chief Legal Officer, 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: (i) testimonial obligations; or (ii) 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.

November 6, 2014  
Date

Respondent  
UBS Securities LLC

By: Mark Impellizzeri

Name: Mark Impellizzeri

Title: Director and Regulatory Attorney

Reviewed by:

\_\_\_\_\_  
Attorney Name  
Counsel for Respondent  
Firm Name  
Address  
City/State/Zip  
Phone Number

Accepted by FINRA:

December 4, 2014  
Date

Signed on behalf of the  
Director of ODA, by delegated authority

James J. Nixon  
James J. Nixon  
Chief Litigation Counsel  
Department of Market Regulation

2012 Market Regulation Examination Samples  
 UBS Securities LLC ("UBSW")  
 Exam No. 20120316413  
 Sample Source/Period\*: October 11, 2012

| <u>Sample Size</u> | <u>Sample Description</u>                                                                                                                                                                                                                      |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1785               | Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements                                                                                                                                                      |
| 18                 | Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements                                                                                                                                                        |
| 0                  | Sales reviewed for compliance with SEC Rule 204 fail-to-deliver requirements                                                                                                                                                                   |
| 1228               | Sell trades reported to a TRF or OTCRF for compliance with sale indicator requirements, FINRA Rules 6182 or 6624                                                                                                                               |
| 105                | Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4755(a)(1)(A) long/short reporting requirements                                                                                                      |
| 105                | Buy and Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4611 capacity reporting requirements                                                                                                         |
| 44                 | Sell orders entered into DirectEdge Exchange execution systems for compliance with EDGA/EDGX Rule 11.15 long/short reporting requirements                                                                                                      |
| 44                 | Buy and Sell orders entered into DirectEdge Exchange execution systems for compliance with EDGA/EDGX Rule 11.22 capacity reporting requirements                                                                                                |
| 55                 | Sell orders entered into NYSE-Arca execution system for compliance with NYSE-Arca Equities Rule 7.16 long/short reporting requirements                                                                                                         |
| 55                 | Buy and Sell orders entered into NYSE-Arca execution system for compliance with NYSE Arca Equities Rule 7.33 capacity reporting requirements                                                                                                   |
| 25                 | Limit orders for NMS securities in which the member acts as an exchange market maker for compliance with the display requirements of SEC Rules 602 and 604                                                                                     |
| 60                 | Orders for compliance with best execution requirements of FINRA Rule 5310:<br>35 Orders from the Order Protection Review<br>0 Order executed with a .PRP (Prior Reference Price) trade modifier<br>25 Customer orders in OTC equity securities |
| 35                 | Orders for compliance with order protection requirements of FINRA Rule 5320                                                                                                                                                                    |
| 10                 | Open Limit orders to buy and/or open Stop orders to sell securities that traded ex-dividend for compliance with FINRA Rule 5330                                                                                                                |
| 329                | Non-tape reports to a TRF or OTCRF for compliance with the Related Market Center Indicator requirements of FINRA Rules 7230A and 7330                                                                                                          |
| 78                 | Orders in securities required to be submitted to OATS for compliance with FINRA Rules 7440 and 7450 requirements                                                                                                                               |
| 78                 | Customer confirmations prepared and maintained in connection with select samples for compliance with SEC Rule 10b-10                                                                                                                           |

2012 Market Regulation Examination Samples  
 UBS Securities LLC ("UBSW")  
 Exam No. 20120316413  
 Sample Source/Period\*: October 11, 2012

| <u>Sample<br/>Size</u> | <u>Sample Description</u>                                                                                                                                                                                                                                                                                                                          |
|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 25                     | Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements                                                                                                                                                                                                             |
| 4                      | Data sets published for September 2012 monthly order execution report for compliance with SEC Rule 605 requirement to publish accurate data (a 'data set' encompasses all required statistical data for single security and order type/size category as described in SEC Rule 605)                                                                 |
| 1                      | Quarterly Routing Report for compliance with SEC Rule 606 requirements                                                                                                                                                                                                                                                                             |
| 22                     | CRD registration records for persons conducting and/or supervising Firm's trading and/or market making activities for compliance with NASD Rule Series 1020-1040; Nasdaq Rule Series 1020-1040, Nasdaq OMX BX Rule Series 1020-1040; Nasdaq OMX PHLX Rule Series 600-604; EDGA/EDGX Rules 2.3, 2.5 and 11.4 and NYSE-Arca Rules 2.4, 6.18 and 7.21 |
| 25                     | Customer orders in OTC equity securities for compliance with FINRA Rule 5310, Supplementary Material .06: Securities with Limited Quotation or Pricing Information                                                                                                                                                                                 |
| 10                     | Disclosures to customers relating to trading in the Extended Hours session for compliance with FINRA Rule 2265                                                                                                                                                                                                                                     |
| 25597                  | Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4                                                                                                                                                                                                                                 |
| 1940                   | Trades reported to a TRF or OTCRF for compliance with FINRA Rules 6380A and 7230A or 6622 and 7330                                                                                                                                                                                                                                                 |
| All<br>Provided        | Member's "Regular & Rigorous" review procedures regarding order execution quality for compliance with FINRA Rule 5310 and NASD Rule 3010                                                                                                                                                                                                           |
| All<br>Provided        | Member's supervisory and operational policies and procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Regulation NMS Rule 611                                                                                                                                                                 |
| All<br>Provided        | Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010, Nasdaq Rule 3010, Nasdaq OMX BX Rule 3010, Nasdaq OMX PHLX Rule 748, EDGA Rule 5.1, EDGX Rule 5.1 or NYSE-Arca Rule 6.18 requirements                                                  |
| All<br>Provided        | Member's risk management and supervisory system/procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Rule 15c3-5 requirements                                                                                                                                                                  |
| 1                      | Trading Halts declared during the on-site portion of the examination for which FINRA Staff observed the operation of the ATS.                                                                                                                                                                                                                      |