

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012033156201**

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

RE: UBS Securities LLC, Respondent
CRD No. 7654

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent UBS Securities LLC ("UBS-S" or 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 Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. UBS-S 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

UBS-S is a registered broker-dealer and has been a member of FINRA (and its predecessors) since August 1978. Its principal office during the relevant time period was in Stamford, Connecticut. The Firm serves as the investment banking and securities arm of UBS AG in the United States by providing investment banking, research, and sales and trading services, primarily to corporate and institutional clients.

RELEVANT DISCIPLINARY HISTORY

In January 2013, UBS-S accepted an AWC (2009017016601) with findings disclosing that: on 74 occasions when the Firm acted as principal for its own account, it failed to provide the customer with written notification that the Firm was a market maker in each security in violation of Exchange Act Rule 10b-10; transmitted to OATS 20 reports that contained inaccurate, incomplete, or improperly formatted data as to "Not-Held" and "Directed" special handling codes; and failed to provide written notification to customers of its correct

capacity in the transaction on 117 occasions. The findings also included that the Firm failed to have adequate supervision and written supervisory procedures relating to, among other things, order handling, trading halts, and books and records. UBS-S consented to a sanction of a censure and a \$90,000 fine (of which \$15,000 related to the inaccurate customer confirmations) and an undertaking to revise its written supervisory procedures with respect to the areas covered in the AWC.

OVERVIEW

From 2003 through June 21, 2011, UBS-S failed to deliver certain trade confirmations and account statements, and in certain instances failed to disclose required transaction information to institutional customers who executed trades in non-U.S. securities through UBS-S non-registered foreign affiliates. During the one-year period from June 16, 2010 to June 21, 2011, the Firm's failure affected an aggregate of 1,552 clients, totaling 16,510 client sub-accounts for 88,622 transactions. In 28,332 of the total affected transactions, the Firm's institutional customers did not receive paper or electronic confirmations, but in 60,290 of these instances, the Firm's institutional customers received some type of electronic notice of execution setting forth the terms of transactions. The electronic notices, however, lacked certain required transaction disclosure language. Moreover, trade confirmations for Over-the Counter ("OTC") equity derivative transactions lacked certain required disclosure language.

The violations stemmed from the Firm's failure to have adequate procedures to supervise and monitor the systems related to delivery of the trade confirmations and account statements. In addition, the violations resulted in the Firm's failure to make and retain certain required books and records. As a result, the Firm's conduct violated Sections 10, 15(a), and 17(a) of the Securities Exchange Act of 1934, Rules 10b-10(a), 15a-6, 17a-3, and 17a-4 promulgated thereunder, NASD Rules 2230, 3010 and 2110, and FINRA Rules 2232 and 2010.

FACTS AND VIOLATIVE CONDUCT

Legal Standards

Section 10 of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-10(a) thereunder, states that "[i]t shall be unlawful for any broker or dealer to effect for or with an account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security (other than U.S. Savings Bonds or municipal securities) unless such broker or dealer, at or before completion of such transaction, gives or sends to such customer written notification..." (*emphasis added*). Designed to protect investors and combat fraud, Exchange Act Rule 10b-10(a)(2) requires broker-dealers to provide the customers with written notification at or before the completion of the transaction whether the broker dealer is acting as agent for the customer, as agent for some

other person, as agent for the broker and some other person or as principal for its own account.

In pertinent part, Section 15(a) of the Exchange Act and Rule 15a-6 thereunder, adopted in 1989, exempts certain foreign brokers or dealers from the registration requirements of Sections 15(a)(1) or 15B(a)(1) of the Exchange Act. The rule affords foreign brokers dealer with a host of exemptions under Section 15, which in pertinent part apply when the intermediary U.S. broker complies with all of its duties enumerated under the applicable provisions of Exchange Act Rule 15a-6, including, among other things, effecting the transactions, and issuing required confirmations and statements, including the terms and conditions of or modifications to the order.

Under Exchange Act Rule 17a-3(a), every member, broker, and dealer shall make and keep current certain prescribed books and records. The records include, among other things, a memorandum of each brokerage order with the terms of the order and entry pursuant to Exchange Act Rule 17a-3(6)(i), and copies of trade confirmations pursuant to Exchange Act Rule 17a-3(8). Exchange Act Rule 17a-4(b)1 requires broker-dealers to maintain such memoranda of transactions "for a period of not less than 3 years, the first two years in an accessible place." By extension, NASD Rule 3110(a) provides that "each member shall make and preserve books, accounts, records memorandum, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of this Association as prescribed by SEC Rule 17a-3."

NASD Rule 2230 requires members to provide customers with written notification of transactions that are delivered "at or before completion" of each transaction. Such notification is required to disclose, among other things, the date and time of the transaction, and the identity, price, and number of shares of the security purchased or sold, whether the broker-dealer is acting as agent, principal, or market maker, and the amount of compensation earned by the broker-dealer. FINRA Rule 2232(a), which superseded NASD Rule 2230 on June 17, 2011, provides the same guidelines as the former NASD rule and requires that a broker- dealer "at or before the completion any transaction in any security effected for or with an account of a customer, give or send to such customer written notification ('confirmation') in conformity with the requirements of SEA Rule 10b-10."

NASD Rule 3010(a) and (b) require members to establish and maintain a supervisory system and enforce written supervisory procedures that are reasonably designed to achieve compliance with all laws, rules and regulations applicable to its business and the activities of its associated persons. The supervisory system must include procedures and processes that are reasonably designed to ensure that the firm meets its reporting obligations.

A substantive violation of any NASD or FINRA rule also violates NASD Rule 2110 and FINRA Rule 2010, which require that “in the conduct of its business,” a FINRA member, “observe high standards of commercial honor and just and equitable principles of trade.”¹

UBS-S’ Failure to Provide Compliant Confirmations

When the Firm’s U.S. institutional customers submitted orders to execute trades in non-U.S. securities, UBS-S typically introduced fixed income, equities, and equity derivatives orders to one of its non-registered foreign affiliates. The foreign affiliate would then execute the trades and provide clearance and settlement on behalf of UBS-S with the client. However, for purposes of compliance with Exchange Rule 15a-6, UBS-S was required to generate the confirmation and statement with all of the information and disclosures enumerated in the rule.

In June 2011, however, UBS-S discovered during routine testing that in some instances, it either failed to produce or send paper and electronic trade confirmations and accounts statements, or sent such confirmations and account statements without certain required disclosure language to certain U.S. institutional clients. Additionally, trade confirmations for OTC equity derivative transactions lacked certain required disclosure language. The Firm’s testing also revealed instances of the aforementioned failures as early as 2003. The Firm then identified a sample period of June 16, 2010 through June 21, 2011 (“the sample review period”) in order to review and quantify the scope of the issue.

The delivery and disclosure failures only impacted U.S. institutional clients executing trades in non-U.S. fixed income, equity, and equity derivative securities in certain European, Middle Eastern, Asian and African markets. The failures to deliver and the lack of required disclosure language deficiencies dated from as early as 2003 and in many instances may have occurred in certain instances when UBS-S first opened the customer accounts.

Improper coding of certain accounts caused the system to fail to recognize the transaction as one for which UBS-S should generate a confirmation. Instead, either the executing UBS-S foreign affiliate produced and sent the confirmation electronically, or UBS-S generated a confirmation without the required disclosure language, or no confirmation was produced at all. For OTC products, UBS-S produced options confirmations with all of the required transaction information but, in some instances, without the required disclosures.

The Firm used five main systems to generate product specific (e.g., fixed income or equities, etc.) trade confirmations and account statements. UBS-S’ failure to

¹On December 15, 2008, FINRA Rule 2010 superseded NASD Rule 2110, however, the text of rule remained the same.

send required Exchange Act Rules 10b-10 and 15a-6 trade confirmations and account statements stemmed from missing or incorrect data or program indicators in the Firm's main systems. Specifically, Firm staff failed to capture and populate system fields with client-specific "static data" information that, had it been entered completely and accurately, would have triggered the generation of a required confirmation.²

The missing static data included items such as a "U.S." institutional investor code, counterparty mailing address, and a flag for a Rule 15a-6 trade confirmation to be generated. When Firm staff incorrectly set the static data, UBS-S' systems failed to recognize the account as one that required a 15a-6 confirmation. Therefore in those instances the Firm did not generate an account statement or confirmation that complied with the requirements of Exchange Act Rule 15a-6.

The Impact of UBS-S' Failure to Provide Compliant Confirmations

1. Equities

Between May 1, 2011 and June 15, 2011, the Firm failed to send Exchange Act Rules 15a-6 and 10b-10 compliant³ paper trade confirmations and account statements for 26,824 equities transactions effected by 638 clients in 5,842 client sub-accounts. For all of these transactions, the customers received some type of electronic notice of execution stating the terms of the transaction.

For 3,638 of the 26,824 affected equities transactions, the Firm provided U.S. institutional customers with electronic trade confirmations that contained certain material terms of the transaction, including that the Firm acted as a dual agent on behalf of the client and the UBS affiliate (the "15a-6 language").

The 3,638 electronic trade confirmations, however, lacked one or more of the required Exchange Act Rule 10b-10 disclosures, including:

- the time of execution or a statement that the time will be furnished upon request;
- the name of person or entity from whom the security was purchased or sold and that such information is available upon request;
- the source and amount of any other remuneration received or a statement that other remuneration has been or will be received and fact that source and

²In an operational program, a static data field is one that is set at the start of the program when the program is created. As the program runs, the static data field does not change and remains constant until the data is manually changed or updated.

³For purposes of characterizing the impact of the Firm's operational failures, the phrase "Exchange Act Rule 10b-10 compliant," shall refer collectively to the Firm's obligations under the rule to: (i) issue paper trade confirmations; and (ii) ensure that all paper and electronic trade confirmations provide the disclosure language required in Exchange Act Rule 10b-10 and Rule 15a-6.

amount of such other remuneration will be furnished upon written request;

- whether the customer was charged an odd-lot differential or equivalent fee, or a statement that the amount of odd-lot differential or fee will be furnished upon request; and
- a statement that actual prices are available upon request and that the Broker is not a member of the Securities Investor Protection Corporation (SIPC) [collectively the "10b-10 disclosures"].

A Firm foreign affiliate provided electronic confirmations for 18,056 of the 26,824 affected equities transactions and the confirmations included certain material terms of the transaction. The electronic confirmations that the foreign affiliate provided, however, lacked required 10b-10 disclosures and 15a-6 language that UBS-S acted as an agent for the parties and that one of the parties was not a member of SIPC. Further, the only manner in which the electronic trade confirmations identified a UBS-S entity was in the email address provided on the confirmation.

The remaining 5,130 affected equities transactions (approximately 19% of the affected transactions) did not receive any paper or electronic trade confirmations, other than electronic notices of execution, which lacked the required 15a-6 language and 10b-10 disclosures. In addition, the Firm, rather than the affiliate, should have issued the electronic trade confirmations.

2. Fixed Income

Between January 1, 2011 and June 21, 2011, the Firm failed to send Exchange Act Rule 10b-10 compliant paper trade confirmations and account statements for 57,493 fixed income transactions effected by 843 clients in 10,502 client sub-accounts. Of the 57,493 affected fixed income transactions, 28,332, or approximately 49%, did not receive either paper or electronic trade confirmations.

For 29,161 of the affected transactions, two UBS-S foreign affiliates electronically provided to U.S. institutional customers notices of execution stating certain terms of the transactions. Those contemporaneous notices for each transaction, however, lacked 15a-6 language and 10b-10 disclosures, regarding, among other things, execution time, agency/principal capacity, seller/buyer name, remuneration, effects of redemption, ratings and yield details. In addition, the Firm, rather than the affiliate, should have issued the trade confirmations.

3. Equity Derivatives

Between June 16, 2010 and June 17, 2011, the Firm failed to send Exchange Act Rule 10b-10 compliant paper trade confirmations for 4,305 equity derivatives

transactions effected by 71 clients in 166 client sub-accounts. (For all of these transactions, the customers received some type of electronic notice of execution stating the terms of the transaction.) Although UBS-S delivered paper or electronic trade confirmations for these transactions which contained certain required 10b-10 disclosures, the Firm did not fully comply with Exchange Act Rule 10b-10 because the trade confirmations lacked the required 15a-6 language. Trade confirmations for OTC equity derivatives similarly failed to include the required 15a-6 language.

4. UBS-S Failed to Deliver Required Paper Confirmations

Under Exchange Act Rules 10b-10 and 15a-6, the Firm was required to issue paper trade confirmations regarding equities and fixed income transactions absent an agreement with the customers to accept electronic confirmations in lieu of paper. The Firm and its non-registered foreign affiliates did not have such an agreement.

In certain instances, however, either the Firm or its foreign affiliate issued some form of electronic trade confirmations for equities and fixed income transactions instead of the required paper confirmation, which did not comply with Exchange Act Rules 10-10 and 15a-6. In addition, during one of the sampling review periods, the Firm issued some electronic confirmations and some paper trade confirmations for a portion of the equities derivatives transactions; however, none of the paper confirmations contained the required 15a-6 language.

5. Account Statements

The incorrect static data coding in the Firm's systems also impacted the generation of customer account statements relating to the foreign affiliate transactions in non-U.S. securities for U.S. institutional customers. Between May 1, 2011 and June 15, 2011, the Firm failed to deliver 1,728 account statements it generated because: (i) the Firm's system's was missing customer address information in a static data field; or (ii) the static data field was populated with an invalid customer address.

UBS-S' Failure to Supervise

Prior to July 2011, UBS-S did not have an adequate supervisory system, including robust exception reports, to monitor the Exchange Act Rule 15a-6 confirmation and account process. While the Firm had a process to review a sample of confirmations periodically, none of the incorrectly coded accounts were part of the sample review, therefore, the static data issues were not timely identified. Those sample reviews were also not designed to detect if a code or indicator necessary for generation of a compliant 15a-6 confirmation was absent. If a code or indicator were absent, for example, the Firm would either not generate the confirmation, or would generate a confirmation being generated

without the required 15a-6 disclosure language. Further, UBS-S did not receive any customer complaints that trade confirmations and account statements were not being provided as required.

In addition, although the Firm had a process to monitor for missing customer addresses, it detected incorrect customer addresses primarily through receipt of returned mail. The Firm's inadequate supervision during the sample review period resulted in a failure to deliver Exchange Act Rules 10b-10(a) and 15a-6 compliant paper trade confirmations and account statements for a total of 88,622 transactions by 1,552 clients in 16,510 client sub-accounts. This constituted nearly 40% of these clients' trades during this time period. In addition, because of UBS-S' failure to supervise, its institutional customers did not receive paper or electronic confirmations for 28,332 of the affected transactions.

In June 2011, the Firm discovered the above-described violations and self-reported the matter to FINRA in July 2011. By August 2011, the Firm had begun to implement reconciliation procedures and reports to correct the static data failures. Moreover, the Firm enhanced its internal systems, created more robust daily and monthly exception reports, and revised its written policies and procedures to include more comprehensive protocols to monitor transactions in non-U.S. securities effected through non-registered foreign affiliates on behalf of U.S. institutional customers. With routine reconciliations and controls, the Firm now verifies the effectiveness of the remediation efforts.

Conclusion

Based on the foregoing conduct, UBS-S violated Exchange Act Rules 10b-10(a) and 15a-6, NASD Rules 2230 and 2110 and FINRA Rules 2232 and 2010 by failing to deliver certain trade confirmations and account statements, and in certain instances failing to disclose required transaction information to institutional customers who executed trades in non-U.S. securities through UBS-S non-registered foreign affiliates.

By failing to send the trade confirmations and account statements, UBS-S also failed to create and preserve required books and records, thereby violating Exchange Act Rules 17a-3(a) and 17a-4 and NASD Rules 3110(a) and 2110 and FINRA Rule 2010. In addition, UBS-S violated NASD Rules 3010 (a) and (b) and 2110 and FINRA Rule 2010 by failing to establish and maintain a supervisory system that reasonably supervised the delivery of trade confirmations and account statements and the disclosure or accurate disclosure of certain required transaction information.

OTHER FACTORS

FINRA acknowledges that in June 2011, as a result of internal testing, UBS-S discovered the above described violations, internally investigated the causes and scope of the violations, and proactively took steps to remediate the problems

prior to self-reporting the issues to FINRA on July 13, 2011. The Firm also substantially assisted FINRA staff during its investigation. Accordingly, the sanctions below reflect the credit that UBS-S has received for self-reporting and substantially assisting FINRA.

B. UBS-S also consents to the imposition of the following sanctions:

- a Censure and \$575,000 fine.

UBS-S agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. UBS-S has submitted an Election of Payment form showing the method by which the Firm proposes to pay the fine imposed.

UBS-S 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

UBS-S specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against UBS-S;
- 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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, UBS-S 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.

UBS-S 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

UBS-S 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 Respondent; 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 Respondent'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. UBS-S 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. UBS-S 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 UBS-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. UBS-S 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 have been given a full opportunity to ask questions about it; that I have agreed to its 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 UBS-S to submit it.

9-4-13

Date

UBS Securities LLC

Suzanne Elovic

By: Suzanne Elovic, Esq. Executive Director
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Accepted by FINRA:

9/9/13

Date

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

Susan Light

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