

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013038351701**

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

RE: UBS Financial Services, Inc. (BD No. 8174)
Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, UBS Financial Services, Inc., ("UBS" 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 UBS alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. UBS 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, with its predecessor, Paine Webber & Company, has been a FINRA member since 1936. UBS is a full service brokerage firm headquartered in Weehawken, New Jersey. The Firm has approximately 580 branches and employs approximately 12,700 registered representatives.

RELEVANT DISCIPLINARY HISTORY

1. In February 2008, UBS consented to a FINRA AWC (EAF0401300001) that found, *inter alia*, that from January 2002 through June 2004, the Firm failed to establish, maintain and enforce supervisory systems and procedures to ensure that investors received the opportunity to purchase Class A mutual fund shares at net asset value ("NAV"), without payment of an initial sales charge, through available NAV Transfer Programs. The Firm agreed to a fine of \$250,000 for this violation and the performance of certain undertakings, including providing remediation to qualified customers.

2. In February 2004, UBS consented to a FINRA AWC (CAF040007) that found that during 2001 and 2002, the Firm failed to provide approximately \$4.6 million in mutual fund breakpoint discounts to certain customers. UBS agreed to pay a fine of \$2,310,884 and agreed to several undertakings and a remediation plan to address the customer harm. On the same date, in a related settlement, the Securities and Exchange Commission ordered UBS to pay a civil penalty of \$2,310,884.

OVERVIEW

From in or about September 2009 through in or about June 2013 (the “Relevant Period”), UBS failed to provide sales charge waivers to mutual fund customers entitled to such waivers through rights of reinstatement, in violation of FINRA Rule 2010. In addition, UBS failed to establish, maintain and enforce a supervisory system and written supervisory procedures reasonably designed to ensure that all eligible customers received sales charge waivers available through rights of reinstatement, in violation of NASD Conduct Rule 3010 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Mutual funds generally require that investors who purchase Class A shares pay a front-end sales charge. Many mutual funds waive the front-end sales charge if the mutual fund is purchased pursuant to a right of reinstatement, which allows customers who have previously sold Class A shares to repurchase those shares at NAV without paying a front-end sales charge provided certain conditions are met. Typically, the customer must reinvest the proceeds from an earlier redemption of a Class A mutual fund in the same fund or fund family within a period specified in the prospectus, usually within 90 to 180 days. If these conditions are satisfied, the mutual fund waives the front-end sales charge.

During the Relevant Period, UBS failed to provide approximately 2,700 customers with sales charge waivers to which they were entitled pursuant to rights of reinstatement. As a result, these customers paid \$277,636 in excess sales charges.¹ By reason of the foregoing, UBS violated FINRA Rule 2010.

Also, during the Relevant Period, UBS failed to establish, maintain and enforce a supervisory system and written supervisory procedures reasonably designed to ensure that all eligible mutual fund investors received sales charge waivers available through rights of reinstatement. UBS primarily relied on its registered representatives to identify and apply sales charge waivers through rights of reinstatement.

The Firm used a report to monitor whether representatives were appropriately identifying and applying these waivers entitled the “NAV Reinstatement Report.” However, the NAV Reinstatement Report was deficient in two respects. First, it only monitored mutual fund trades where the transaction amount (purchase or sale) exceeded \$5,000. Second, the report failed to monitor any transactions for approximately twenty of the mutual funds that the Firm sold.

¹ UBS has reimbursed all of the customers.

Also, the Firm had no supervisory system or procedures to review or test the NAV Reinstatement Report to ensure that it was accurate, complete, and functioning as intended. Thus, UBS was unaware that for several years the report was not monitoring all mutual fund transactions for missed rights of reinstatement.

By reason of the foregoing, UBS violated NASD Conduct Rule 3010 and FINRA Rule 2010.

C. Respondent also consents to the imposition of the following sanctions:

- A censure; and,
- A fine in the amount of \$250,000

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

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against it;
- 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, Respondent 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.

Respondent 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

Respondent 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 Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 - 2. this AWC will be made available through FINRA's public disclosure program in response in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. Respondent 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. Respondent 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 Respondent'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. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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.

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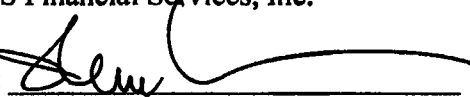
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement 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 UBS, 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 UBS has 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 to submit it.

7/13/16

Date(mm/dd/yyyy)

UBS Financial Services, Inc.

By: 

Ilene Marquardt

Managing Director

Senior Deputy General Counsel

Accepted by FINRA:

8/15/16

Date

Signed on behalf of the

Director of ODA, by delegated authority



Michael J. Newman

Senior Regional Counsel

FINRA Department of Enforcement

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