

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2017056154401**

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

RE: UBS Securities LLC (Respondent)
Member Firm
CRD No. 7654

Pursuant to FINRA Rule 9216, Respondent UBS Securities LLC 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 Respondent alleging violations based on the same factual findings described in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

UBS became a FINRA member in August 1978. The firm is headquartered in New York, New York, and it has more than 1,900 registered representatives and maintains approximately 35 branches. The firm provides banking, research, and securities trading services to primarily institutional clients.

In January 2014, FINRA censured and fined UBS \$40,000 for violating (a) FINRA Rule 2360(b)(5) by, among other things, failing to report the contra party for approximately 11,600 over-the-counter (OTC) options positions to the Large Options Positions Reporting system (LOPR) and (b) NASD Rule 3010 and FINRA Rule 2010 by failing to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with FINRA LOPR reporting rules.

In July 2015, The Nasdaq Options Market LLC (NOM) censured and fined UBS \$350,000 for violating (a) Chapter III, Section 10 of the NOM Rules by, among other things, inaccurately reporting positions to the LOPR in approximately 1.7 million instances and (b) Chapter III, Section 2(a)(i) of the NOM Rules and Nasdaq Rules 3010, 2110, and 2010A by failing to maintain an adequate system of supervision, including systems of follow-up and review, reasonably designed to achieve compliance with NOM rules governing LOPR reporting.

In December 2016, FINRA censured and fined UBS \$2.45 million for violating (a) FINRA Rule 2360(b)(5) by failing to report or inaccurately reporting OTC options positions to the LOPR in approximately 7.59 million instances and (b) NASD Rule 3010 and FINRA Rules 3110 and 2010 by failing to establish and maintain a supervisory system reasonably designed to achieve compliance with FINRA LOPR reporting rules.

In December 2019, Nasdaq PHLX LLC (Phlx) censured and fined UBS \$15,000 for violating (a) Phlx Rule 1003(a) by inaccurately reporting data to the LOPR in 12,097 instances and (b) Phlx Rule 748 for failing to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with Phlx LOPR reporting rules.¹

OVERVIEW

From January 2010 through September 2021, UBS failed to report and inaccurately reported OTC options positions to the LOPR in at least 7.1 million instances in violation of FINRA Rules 2360(b)(5) and 2010. In addition, from January 2010 through June 2018, UBS established certain options positions that exceeded applicable OTC position limits in violation of FINRA Rules 2360(b)(3) and 2010. Lastly, from November 2013 through November 2022, UBS failed to establish and maintain a supervisory system, including written procedures, reasonably designed to achieve compliance with FINRA Rule 2360(b)(5) in violation of NASD Rule 3010 and FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's OTC position limit surveillance and UBS's self-reporting of one of the three reporting issues discussed below.

Background – LOPR Reporting and Options Position Limits

FINRA requires member firms to report large options positions to the LOPR.² FINRA uses LOPR information to surveil for potentially manipulative behavior, including attempts to corner the market in the underlying equity, leverage an option position to affect the price, or move the underlying equity to change the value of a large option position. The accuracy of LOPR reporting is essential to FINRA's surveillance. It is particularly important with respect to the OTC options market because there is no independent source of data for regulators to review OTC options.

FINRA Rule 2360(b)(5) requires member firms to report to the LOPR each customer or firm account, that, acting alone or in concert, has established an aggregate position of 200 or more option contracts on the same side of the market covering the same underlying security or index. The report must identify, among other things, the account name, the account address, and the total number of option contracts comprising the reportable

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

² The Options Clearing Corporation (OCC) hosts the LOPR and collects and disseminates all LOPR data for the U.S. options exchanges and FINRA.

position, including, in the case of short positions, the covered quantity of those positions as defined by FINRA Rule 2360(a)(10).

Options position limits are in place because an excessively large options position may disrupt the marketplace by allowing the holder to influence the price of the option or underlying security. Position limits also protect firms and customers from overexposure to price fluctuations in one product.

FINRA Rule 2360(b)(3)(A)(iii) controls position limits for conventional equity options and prohibits a firm or an individual from establishing an options position in excess of an allowable limit. For the option contracts involved in this matter, the applicable position limit was 25,000 contracts.

A violation of FINRA Rule 2360(b) also is a violation of FINRA Rule 2010, which requires a member, in the conduct of its business, to observe high standards of commercial honor and just and equitable principles of trade.

UBS failed to report and inaccurately reported OTC options positions to the LOPR.

From January 2010 through September 2021, UBS failed to report OTC options positions to the LOPR in approximately 436,000 instances³ and inaccurately reported certain required information for OTC options positions to the LOPR in more than 6.6 million instances. These violations were caused by three technology issues, each of which persisted for at least six years.

First, from January 2010 through June 2018, UBS failed to report to the LOPR positions in OTC options overlying foreign securities where it acted as an intermediary between U.S.-based customers and its foreign affiliates.⁴ These intermediated positions were booked to its foreign affiliates' systems and therefore were not fed into UBS's LOPR reporting system. As a result, UBS failed to report OTC options positions to the LOPR in approximately 436,000 instances.

Second, from January 2010 through September 2020, UBS reported inaccurate short-covered quantities to the LOPR in millions of instances. During this time, UBS could not systematically determine the short-covered quantity of OTC options positions and instead chose to program its systems to report a *default* quantity to the LOPR. As a result, from January 2010 through June 2019, UBS reported a default covered quantity equal to the short quantity, misreporting most short positions as fully covered.⁵ In July 2019, UBS changed the default to report a covered quantity of zero for new positions. UBS's

³ An "instance" occurs where a firm fails to report, or inaccurately reports, a position for one day. The number of instances is determined by multiplying a given reportable position by the number of trade dates that the position was not reported or was reported inaccurately.

⁴ FINRA's LOPR reporting and options position limit rules apply to transactions effected by a member acting as an intermediary under Rule 15a-6 of the Securities Exchange Act of 1934. See NASD Notice to Members 98-92 (Nov. 1998).

⁵ A sample review found that only approximately seven percent of UBS's short positions were fully covered.

reporting remained inaccurate because (1) some short positions had a covered quantity greater than zero and (2) pre-existing positions continued to be misreported as fully covered.⁶ This issue impacted the majority of UBS's LOPR reports for short positions in OTC options. For example, from July 2014 through May 2020, UBS reported inaccurate short-covered quantities to the LOPR in approximately 6.6 million instances.

Third, from August 2015 through September 2021, a technology coding issue impacted UBS's LOPR reporting for certain high-net-worth clients. As a result, UBS reported inaccurate account names and account addresses to the LOPR in 24,446 instances.

Therefore, UBS violated FINRA Rules 2360(b)(5) and 2010.

UBS established OTC options positions that exceeded the applicable position limits.

From January 2010 through June 2018, UBS booked positions in OTC options overlying foreign securities where it acted as an intermediary between U.S.-based customers and its foreign affiliates to its foreign affiliates' systems that did not feed into its position limit monitoring systems. As a result, UBS established certain OTC options positions that exceeded the applicable position limits. For example, between May 2017 and June 2018, UBS established at least seven positions, six on behalf of customers and one on behalf of a firm account, in four OTC options that exceeded the applicable position limit of 25,000 contracts. These positions were over the limit for periods ranging from two days to 208 days.

Therefore, UBS violated FINRA Rules 2360(b)(3) and 2010.

UBS failed to reasonably supervise its compliance with FINRA Rule 2360(b)(5).

FINRA Rule 3110(a), like its predecessor NASD Rule 3010(a), requires a member to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.⁷ FINRA Rule 3110(b), like its predecessor NASD Rule 3010(b), requires a member to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. A violation of NASD Rule 3010 or FINRA Rule 3110 is also a violation of FINRA Rule 2010.

The duty to supervise under NASD Rule 3010 and FINRA Rule 3110 includes the responsibility to reasonably investigate red flags that indicate rule violations may be occurring and to act upon the results of such investigation.

⁶ An option position is reportable each day it is above the reporting threshold and the first day it falls below the reporting threshold. See OCC LOPR FAQ 24 (issued Aug. 2011 and last updated June 2020). For positions established before UBS changed the default to zero, UBS continued to report the old default (covered quantity equal to the short quantity), unless a position change triggered submission of a Modify record.

⁷ FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

UBS failed to reasonably investigate and act upon red flags of LOPR reporting deficiencies. UBS identified the three reporting issues described above but unreasonably failed to correct them for several years. First, UBS identified the intermediated positions issue in November 2013 and self-reported the issue to FINRA in November 2017, but did not correct the issue until June 2018. Second, UBS identified the short-covered quantity issue in mid-2015 and hired a consultant to review the issue, as well as its compliance with LOPR reporting rules, in October 2018, but did not take any corrective action until mid-2019 and did not fully remediate the issue until September 2020. Third, UBS identified the account name and address issue in mid-2018 but only after FINRA identified the issue and raised it with UBS in January 2021 did UBS determine the root cause and then implement a systematic fix in September 2021.

In addition, from January 2016 through November 2022, UBS failed to establish and maintain a supervisory system, including written procedures, reasonably designed to achieve compliance with FINRA Rule 2360(b)(5). During this period, UBS's supervisory system and written procedures for LOPR reporting failed to provide for any supervisory review to determine whether the short-covered quantity information reported to the LOPR was accurate.

Therefore, UBS violated NASD Rule 3010 and FINRA Rules 3110 and 2010.

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

- a censure; and
- a \$3,750,000 fine.

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 after the execution of this AWC, the monetary sanction imposed in this matter.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

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 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 its acceptance or rejection.

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 action brought by FINRA or any other regulator against Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;

- 
3. FINRA may make a public announcement concerning this agreement and its subject matter 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.
- 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 Respondent 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 in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

January 5, 2023

Date

Darya Geetter

UBS Securities LLC

Respondent

Print Name: Darya Geetter

Title: Head of US Securities Regulatory Affairs

Reviewed by:

STEPHANIE R. NICOLAS

Stephanie Nicolas, Esq.

Counsel for Respondent

WilmerHale

1875 Pennsylvania Avenue, NW

Washington, DC 20006

(202) 663-6000

Accepted by FINRA:

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

January 5, 2023

Date

Sharyn Gillespie

Sharyn Gillespie

Senior Counsel

FINRA

Department of Enforcement

15200 Omega Drive, Suite 300

Rockville, MD 20850-3241