

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2021073037102**

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

RE: UBS Financial Services Inc. (Respondent)
Member Firm
CRD No. 8174

Pursuant to FINRA Rule 9216, Respondent UBS Financial Services Inc. 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 has been a FINRA member since 1936. The firm, which is headquartered in Weehawken, New Jersey, has over 11,000 registered representatives at more than 800 branch locations. UBS is a full-service brokerage firm.¹

OVERVIEW

From at least September 2010 to July 2021, UBS failed to establish and maintain a supervisory system reasonably designed to achieve compliance with the firm's obligation to monitor transmittals of customer funds to third parties and to respond reasonably to red flags of private securities transactions. During this period, UBS failed to detect that a registered representative, who was acting outside the scope of his employment with the firm, sold to his UBS customers securities that were offered by a third party. Some of the registered representative's customers invested approximately \$1.8 million through direct wire transfers from the customers' UBS accounts to the third party. Therefore, UBS violated NASD Rules 3010 and 3012² and FINRA Rules 3110 and 2010.

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

² FINRA Rule 3110 superseded NASD Rule 3010 and relevant parts of NASD Rule 3012 effective December 1, 2014. See Regulatory Notice 14-10 (March 2014).

FACTS AND VIOLATIVE CONDUCT

This matter originated from a regulatory tip made to FINRA.

A. Member firms are required to monitor transmittals of customer funds.

FINRA Rule 3110(a), like its predecessor NASD Rule 3010(a), requires that “[e]ach member firm 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 [and NASD] rules.” The duty to supervise under FINRA Rule 3110 and NASD Rule 3010 also includes the responsibility to reasonably investigate red flags that suggest that misconduct may be occurring and to act upon the results of such investigation. NASD Rule 3012(a)(2)(B)(i) specifically required firms to have supervisory policies and procedures reasonably designed to review and monitor, among other things, transmittals of funds or securities from customers to third parties.

A violation of FINRA Rule 3110 or NASD Rules 3010 and 3012 is also a violation of FINRA Rule 2010, which requires a firm to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business.

In Regulatory Notice 09-64 (November 2009), FINRA reminded member firms that “[a]s part of their duty to safeguard customer assets and to meet their supervisory obligations, FINRA firms must have and enforce policies and procedures governing the withdrawal or transmittal of funds or other assets from customer accounts.” These policies and procedures “should be reasonably designed to review and monitor all instructions to transmit or withdraw assets from customer accounts.”³

B. UBS failed to reasonably supervise transmittals of customer funds.

1. A UBS registered representative facilitated at least 30 UBS customers’ investments in private securities transactions totaling over \$7.2 million.

From approximately 1997 to 2021, a registered representative of UBS participated in private securities transactions by selling to at least 30 of his UBS customers a “fixed annuity” product offered by Company A—an entity formed by the representative’s college friend and business acquaintance.⁴ UBS’s policies prohibited registered representatives from recommending, referring, soliciting, or directing clients to purchase

³ When FINRA issued Regulatory Notice 09-64 and related Regulatory Notice 12-05 (January 2012), NASD Rule 3012 and Incorporated NYSE Rule 401 were the relevant operative rules. Effective December 1, 2014, as part of FINRA’s new consolidated rules governing supervision, NASD Rule 3012’s requirements regarding the review and monitoring of transmittals of funds and securities, among other things, were relocated to FINRA Rule 3110(c)(2). See Regulatory Notice 14-10 (March 2014).

⁴ The “fixed annuities” offered by Company A were not, in fact, fixed annuities, but rather were securities. FINRA barred the representative in January 2023 for participating in undisclosed private securities transactions in violation of NASD Rules 3040 and 2110 and FINRA Rules 3280 and 2010.

any product not approved or offered by UBS. The “fixed annuities” were not approved or offered by UBS. Yet, beginning in at least September 2010, ten of the representative’s customers at UBS invested in the “fixed annuities” by wiring approximately \$1.8 million, through 64 wire transfers, directly from their UBS accounts to Company A’s bank accounts. Collectively, the representative’s UBS customers invested over \$7.2 million in Company A.⁵

UBS did not discover the representative’s misconduct until the fall of 2021 when one of the representative’s former UBS customers sought to withdraw her entire investment from Company A. Those of the representative’s customers who invested in Company A lost most, if not the entirety, of their investments. After discovering the representative’s misconduct, UBS repaid the customers who had invested in Company A their principal plus the amount of appreciation Company A listed on the customers’ statements, totaling more than \$17 million in restitution.

2. UBS’s supervisory system was not reasonably designed.

From at least September 2010 through July 2021, UBS did not have a reasonable supervisory system to review transmittals of customer funds to third parties by wire or check. During this period, the firm automatically flagged for heightened review wires that met certain criteria (*e.g.*, the wire was the customer’s first domestic wire in six months). But the firm’s automated surveillance system did not detect and monitor for instances in which multiple, unrelated customers transferred funds from their UBS accounts by check or wire to the same external party (Many-to-One Transfers).⁶ Nor did any other aspect of the firm’s system monitor for Many-to-One Transfers, even though these transfers can be an indicator of fraud, conversion, private securities transactions, or undisclosed outside business activities. Indeed, those UBS customers who effected Many-to-One Transfers to Company A—by wiring funds from their UBS accounts to Company A’s bank accounts—lost most, if not the entirety, of their investments in Company A. The firm failed to detect that its registered representative had sold investments offered by Company A to UBS customers, at least ten of whom wired money to Company A from their UBS accounts. Given the hundreds of thousands of outgoing third-party wire transfers that UBS processed each year, the firm’s failure to establish any system to surveil for Many-to-One Transfers was unreasonable.

3. UBS failed to reasonably respond to red flags.

UBS also failed to reasonably respond to red flags that its representative was participating in private securities transactions involving Company A.

⁵ The representative’s customers also invested in Company A by writing checks made payable to Company A from their non-UBS bank accounts.

⁶ In August 2021, UBS began using a fraud detection tool which includes a scenario designed to detect Many-to-One Transfers.

First, in July 2016, the representative's sales assistant emailed the representative's supervisor to obtain approval to waive a wire transfer fee for a customer who was wiring money to Company A. Although the sales assistant's email referred to Company A as an entity to which the representative's customers sent money "for investing," the supervisor failed to reasonably investigate Company A or the representative's involvement in it. Instead, the supervisor approved the request to waive the wire transfer fee, without following up with the representative regarding Company A or contacting the customer about the wire transfer request. The customer then wired \$20,000 to Company A.

Second, for at least 17 of the wire transfers to Company A, the reason the customers provided for the wire transfer request was "investment." UBS flagged the wires for additional review and approval but did not investigate why the representative's customers were wiring money to the same external, non-UBS entity for an "investment."

Third, UBS failed to reasonably investigate several instances from September 2010 to July 2021 in which at least two customers wired money to Company A within the same 30-day period. As an example, in March 2021, two unrelated customers wired a total of \$47,000 from their UBS accounts to Company A within eight days of one another. Although UBS flagged both wires for additional review and approval, the firm did not investigate why two of the representative's customers were wiring money to the same external party.

Therefore, UBS violated NASD Rules 3010 and 3012 and FINRA Rules 3110 and 2010.

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

- a censure and
- an \$850,000 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.

July 1, 2024
Date

Kiyu Sakai
UBS Financial Services Inc.
Respondent

Print Name: Kiyu Sakai

Title: Managing Director and Counsel
Region Americas Legal

July 1, 2024
Date

[Signature]
UBS Financial Services Inc.
Respondent

Print Name: Patricia Shilling

Title: Managing Director

Reviewed by:



Kiye Sakai
General Counsel
UBS Financial Services Inc.
11 Madison Avenue, 11th Floor
New York, NY 10010

Accepted by FINRA:

July 8, 2024

Date

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



Maureen E. Mueller
Principal Counsel
FINRA
Department of Enforcement
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