

**NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. CE1050008**

TO: Department of Enforcement
NASD

RE: UBS Securities LLC, Respondent CRD No. 7654

Pursuant to Rule 9216 of NASD Code of Procedure, UBS Securities LLC (UBS Securities" or "Respondent") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against Respondent alleging violations based on the same factual findings.

Respondent understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
3. If accepted:
 - a. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against it;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondent's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. 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 allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in

this provision affects Respondent's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

Respondent also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

UBS Securities, formerly known as UBS Warburg LLC, has been a member of NASD since 1978. It is principally owned by UBS AG (UBS AG was formed through the June 1998 merger of Union Bank of Switzerland with Swiss Bank Corporation) and is engaged in the business of global investment banking, securities trading, and asset management. The principal office of UBS Securities is located at 677 Washington Boulevard, in Stamford, Connecticut.

UBS AG purchased PaineWebber Inc. ("PaineWebber") in November 2000 and PaineWebber became known as UBS PaineWebber, and is now known as UBS Financial Services LLC ("UBS FS"). PaineWebber, founded in 1879, was a full-service securities firm located in New York and has been a member of NASD since 1936. As part of the merger, PaineWebber's banking and research activities were shifted to UBS Warburg, and some investment bankers and research analysts previously employed by PaineWebber became employees of UBS Warburg. Since the merger, UBS FS is principally engaged in the business of servicing retail investors and no longer employs equity investment bankers or research analysts. UBS FS's principal office is located at 1285 Avenue of the Americas, New York, New York.

Neither UBS Securities, UBS FS, nor any of their predecessor entities have any relevant disciplinary history.

For purposes of this AWC, UBS Securities, UBS FS and their predecessor entities will be collectively referred to as UBS or the Firm.

I.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Formal Complaint issued specifying the allegations against it;
- B. To be notified of the Formal 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, 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 Rule 9143 or the separation of functions prohibitions of 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.

II.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, without admitting or denying the allegations or findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD 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 NASD:

Overview

1. This action concerns UBS's violations of the record-keeping requirements of Section 17(a)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"), Rule 17a-4 thereunder, and NASD Conduct Rules 3010 and 3110 during the relevant period (July 1, 1999 through June 30, 2002). During that time, UBS failed to comply with the requirement that it preserve for three years, the first two of which in an accessible place, electronic communications relating to the Firm's business as a broker, dealer and member of an exchange. In addition, UBS lacked adequate systems or procedures to ensure the preservation of electronic communications. NASD, the Securities and Exchange Commission, and the New York Stock Exchange (collectively, the "regulators") discovered these deficiencies during an inquiry into the Firm's research and investment banking ("IB") activities.

Non-Compliance with Books and Records Requirements

2. In April 2002, the regulators commenced an inquiry into the research and IB activities at UBS and other broker dealers during the period of July 1, 1999 to June 30, 2001 (the "Phase I inquiry"). During this time, employees at UBS used electronic

communications to conduct business for the Firm as a broker, dealer and member of an exchange.

3. Pursuant to the Phase I inquiry, the regulators made multiple requests to UBS for electronic mail ("e-mail") of research analysts and investment bankers. The Firm produced e-mail in response to these requests and subsequently indicated by letter that while the Firm had endeavored to provide all e-mail responsive to the regulators' requests, UBS was not able to locate restorable back-up tape for the entire time period for every person whose e-mail had been requested. The Firm did not, at that time, indicate the scope or extent of e-mail that could not be restored or located. The communications and other information contained in the produced e-mail provided evidence that, among other things, the Firm had engaged in acts and practices that imposed conflicts of interest on research analysts.

4. In April 2003, the regulators initiated and settled joint enforcement actions against UBS and other broker dealers subject to the Phase I inquiry for various violations involving their research and IB activities. See *UBS Warburg LLC*, Hearing Panel Decision 03-070 (Apr. 22, 2003); *SEC v. UBS Warburg LLC*, Litigation Release No. 18112 (Apr. 28, 2003); and *UBS Warburg LLC*, NASD Letter of Acceptance Waiver and Consent No. CAF030022 (April 24, 2003).

5. In May 2003, the regulators commenced an inquiry into the supervision of the research and IB activities at UBS and other broker dealers during the period of July 1, 1999 to June 30, 2002 (the "Phase II inquiry").

6. Pursuant to the Phase II inquiry, the regulators requested that the Firm produce e-mail for various supervisory personnel and other employees. The Firm produced certain e-mail in response to these requests.

7. In August 2003, in response to inquiries by the regulators, UBS stated that it had not been able to retain, locate and/or restore all of the e-mail for certain individuals.

8. The regulators then requested that UBS provide detailed information on the Firm's ability to locate and restore backup tapes containing e-mail responsive to the regulators' requests during the Phase I and Phase II inquiries. In a series of responses, the Firm admitted that it had failed to retain, locate and/or restore all responsive e-mail requested during those inquiries and provided a detailed explanation of the circumstances leading to that failure.

9. UBS identified the following reasons for its failure to retain, locate and/or restore all responsive e-mail: certain backup tapes containing responsive e-mail of UBS employees could not be located; certain backup tapes containing responsive e-mail were located but did not contain e-mail, although a log had been generated indicating that the e-mail had been successfully backed-up; e-mail on certain backup tapes was corrupted and unreadable; certain backup tapes were re-cycled in violation of Firm policy so that the responsive e-mails had been taped over; certain tapes were

misabeled; and certain backup tapes from servers that had been located at PaineWebber facilities prior to the November 2000 merger of PaineWebber and UBS AG were never found.

10. During the relevant period, UBS had systems and procedures requiring the retention of certain electronic communications. However, those systems and procedures were inadequate to ensure that all electronic communications relating to the Firm's business were preserved for three years and for the first two years in an accessible place.

Section 17(a) of the Exchange Act, Rule 17a-4, and Applicable NASD Rules

11. Section 17(a)(1) of the Exchange Act provides that each member of a national securities exchange, broker or dealer "shall make and keep for prescribed periods such records, furnish copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title."

12. The Commission has emphasized the importance of the records required by the rules as "the basic source documents" of a broker dealer. *Statement Regarding the Maintenance of Current Books and Records by Brokers and Dealers*, 4 SEC Docket 195 (April 6, 1974). The record-keeping rules are a "keystone of the surveillance of brokers and dealers by [Commission] staff and by the securities industry's self-regulatory bodies." *Edward J. Mawod & Co.*, 46 S.E.C. 865, 873 n. 39 (1977) (citation omitted), *aff'd sub. nom. Mawod & Co. v. SEC*, 591 F.2d 588 (10th Cir. 1979).

13. Pursuant to its authority under Section 17(a)(1), the Commission promulgated Rule 17a-4. Rule 17a-4(b)(4) requires UBS to "preserve for a period of not less than three years, the first two years in an easily accessible place ... [o]riginals of all communications received and copies of all communications sent ... by such member, broker or dealer (including inter-office memoranda and communications) relating to [the firm's] business as such[.]" Rule 17a-4 is not by its terms limited to physical documents. The Commission has stated that internal electronic communications fall within the purview of Rule 17a-4 and that, for purposes of Rule 17a-4, "the content of the electronic communication is determinative" as to whether that communication is required to be retained and accessible. *Reporting Requirements for Brokers or Dealers under the Securities Exchange Act of 1934*, SEC Rel. No. 34-38245 (Feb. 5, 1997); see also *In re Janney Montgomery Scott LLC*, SEC Rel. No. 34-50272 (Aug. 25, 2004); *In the Matter of Robertson Stephens, Inc.*, SEC Rel. No. 34-47144 (Jan. 9, 2003); and *In the Matter of Deutsche Bank Securities, Inc., et al.*, SEC Rel. No. 34-46937 (Dec. 3, 2002).

14. NASD Rule 3110 requires that "each member shall make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of this Association and as prescribed by SEC Rule 17a-3. The

record keeping format, medium, and retention period shall comply with Rule 17a-4 under the Securities Exchange Act of 1934."

15. NASD Rule 3010 requires member firms to establish, maintain and enforce a supervisory system that is reasonably designed to achieve compliance with applicable federal securities laws and NASD Rules.

16. Based on the foregoing, Respondent (a) failed to keep electronic communications for three years and/or failed to preserve electronic mail communications for the first two years in an accessible place in violation of Section 17(a) of the Exchange Act, Rule 17a-4 thereunder, and NASD Rule 3110, and (b) had inadequate supervisory systems and procedures that were not reasonably designed to achieve compliance with Section 17(a), Rule 17a-4 thereunder and NASD Rule 3110 in violation of NASD Rule 3010.

B. Respondent also consents to the imposition, at a maximum, of the following sanctions:

1. A censure; and
2. A fine in the amount of \$2,100,000. The amount paid to NASD by Respondent shall be reduced by \$700,000 pursuant to a civil money penalty paid to the U.S. Treasury and by \$700,000 pursuant to a fine paid to the Exchange, in related proceedings with the Commission and Exchange.
3. In addition, Respondent shall complete an appropriate undertaking to review its procedures regarding the preservation of electronic communications for compliance with NASD rules and the federal securities laws. Within 90 days of the execution of this AWC, Respondent undertakes and agrees to inform the NASD in writing that it has completed its review and that it has established systems and procedures in place reasonably designed to achieve compliance with those laws and rules concerning the preservation of electronic communications, including, but not limited to, all electronic communications that are sent and/or received through any platform or background IT application. The staff of the NASD Department of Enforcement shall have the discretion, upon a showing of good cause, to extend the deadline for compliance with the undertaking set forth in this paragraph.

III.

OTHER MATTERS

Respondent understands that it 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 NASD, nor does it reflect the views of NASD or its staff.

Respondent agrees to pay any monetary sanctions imposed on it upon notice that this AWC has been accepted and that such payments are due and payable and has attached an Election of Payment form showing the method by which it proposes to pay any fine imposed. UBS specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Respondent certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce Respondent to submit it.

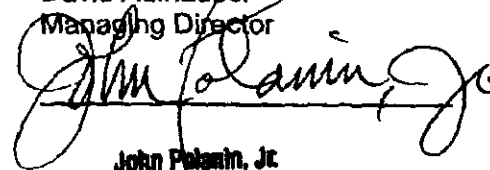
UBS SECURITIES LLC

Date: 5/18/05

By:


David Aufhauser
Managing Director

By:


John Palamin, Jr.
Managing Director
Region Americas Compliance

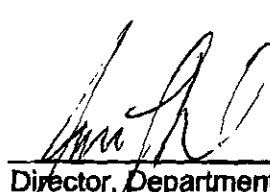
Reviewed by:



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Accepted by NASD:

7/13/05
Date


Director, Department of Enforcement

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