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REGISTRATION & DISCLOSURE

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E1020040733 01

TO: Department of Enforcement
NASD

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

Pursuant to Rule 9216 of NASD Code of Procedure, UBS Financial Services, Inc. ("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 Respondent;
 - 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

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- 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 finding 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:

Respondent has been a member of NASD since October 13, 1936. During all periods mentioned herein, Respondent was a registered broker-dealer with the United States Securities and Exchange Commission and a member of NASD, which registration and membership remain currently in effect. Respondent is a Delaware corporation that maintains its principal place of business at 1200 Harbor Boulevard, Weehawken, New Jersey, and has branch offices throughout the United States.

In November 1998, with Respondent neither admitting nor denying the allegations set forth therein, the New York Stock Exchange issued Decision No. HPD 98-112, censuring and fining Respondent \$125,000 in connection with charges that Respondent violated NYSE Rules 345.17 and 351(a) and (d) by filing late and/or erroneous forms, including (i) Uniform Applications for Securities Industry Registration or Transfer (Forms U4), (ii) Uniform Termination Notices for Securities Industry Registration (Forms U5), and (iii) NYSE Forms RE-3 (Submission of Required Information Pertaining to Members, Member Organizations, Allied Members, Registered and Non-Registered Employees, and Approved Persons).

Respondent has no other more recent relevant disciplinary history with the Securities and Exchange Commission, any self-regulatory organization or any state securities regulator.

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 Respondent;

- 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 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:

SUMMARY

1. From January 2002 through December 2004, Respondent failed to file, in a timely manner, certain amendments to Forms U4 (Question 14 – Disclosure Questions) and Forms U5 (Question 7 – Disclosure Questions), as required by NASD By-Laws, Article V, Sections 2(c) and 3(b), respectively. The late filings pertained to certain individuals' reportable customer complaints, regulatory actions, and criminal disclosures. During this time-period, Respondent's supervisory system and procedures were not reasonably designed to achieve compliance with Article V, Sections 2(c) and 3(b) of NASD's By-Laws.

2. During that same three-year period, Respondent also failed to file amendments to Forms U4 (Question 14I(3)) and Forms U5 (Question 7E(3)) to disclose certain written customer complaints, as required by the above-referenced NASD By-Laws.
3. From January 2002 through mid-June 2003, Respondent failed to file certain Forms U5 timely and with accurate termination dates regarding retired, registered persons who participated in Respondent's Retiring Broker Program, as required by NASD's By-Laws, Article V, Section 3(a).
4. By not fully complying with the referenced reporting obligations, Respondent may have (i) hampered investors' ability to assess the background of certain brokers through NASD's public disclosure program, (ii) rendered certain information unavailable to member firms making hiring determinations, (iii) reduced the ability of state securities regulators to review applications by brokers to transfer firms, and (iv) hindered NASD from promptly investigating certain disclosure items.

**RESPONDENT FAILED TO TIMELY FILE CERTAIN
AMENDMENTS TO FORMS U4 AND U5**

5. Article V, Section 2(a) of NASD's By-Laws provides that applications by any person for registration with NASD shall be made by a process established by NASD on a prescribed form signed by the applicant. Article V, Section 2(c) further generally provides that every application for registration filed with NASD shall be kept current at all times by supplementary amendments which must be filed within 30 days after learning of the facts or circumstances giving rise to the amendment.¹
6. Article V, Section 3(b) of NASD's By-Laws provides that, in the event a member learns of facts or circumstances causing any information set forth in termination notice filed with NASD to become inaccurate or incomplete, the member must notify NASD, within 30 days thereafter, of those facts or circumstances by means of an amendment to the termination notice.
7. NASD Conduct Rule 3010 requires NASD member firms to establish and maintain a supervisory system and enforce written supervisory procedures that

¹ The deadline for filing Forms U4 and U5 is measured by calendar days. See NASD By-Laws, Article I, ¶(g) (the term "day" means calendar day unless the context requires otherwise); [Notice of Filing of a Proposed Rule Change by NASD to the By-Laws of NASD], File SR-NASD-97-71, SEC Release No. 34-39175, 1997 SEC LEXIS 2093 (Sept. 30, 1997) at *21 and *24 (the addition of a definition section to the By-Laws did not substantively change the By-Laws); Former NASD By-Laws, Article IV, Sections 2(c) and 3(a) and (b) (NASD Manual, July 1997) (under the earlier By-Laws, which did not contain a definitions section, the term "calendar days" was contained directly in the provisions concerning form filings).

are reasonably designed to achieve compliance with all laws, rules, and regulations applicable to its business and the activities of its associated persons.

8. From January 1, 2002 through December 31, 2004, Respondent filed 559 late amendments to Forms U4 and U5, which represented 18.4% of 3,032 required amendments relating to terminations for cause, reportable customer complaints, regulatory actions and criminal disclosures.
9. During this three-year period, Respondent's supervisory system and procedures were not reasonably designed to achieve compliance with Article V, Sections 2(c) and 3(b) of NASD's By-Laws.
10. By reason of the conduct described in paragraphs "II.A.8" and "II.A.9," Respondent violated Article V, Sections 2(c) and 3(b) of NASD's By-Laws and NASD Conduct Rules 2110 and 3010.

**RESPONDENT FAILED TO FILE CERTAIN
AMENDMENTS TO FORMS U4 AND U5**

11. On each Form U4, one of the disclosure questions, Question 14I(3) [formerly 23I(3)], requires the reporting of certain types of customer complaints. The Question reads:

Within the past twenty-four (24) months, have you been the subject of an *investment-related*, consumer-initiated, written complaint, not otherwise reported under question 14I(1) and (2) [relating to certain arbitrations, civil litigation and settlements], which:

- (a) alleged that you were *involved* in one or more sales practice violations and contained a claim for compensatory damages of \$5,000 or more (if no damage amount is alleged, the complaint must be reported unless the *firm* has made a good faith determination that the damages from the alleged conduct would be less than \$5,000), or,
- (b) alleged that you were *involved* in forgery, theft, misappropriation or conversion of funds or securities.²

² Emphasis in original.

12. On each Form U5, one of the disclosure questions, Question 7E(3) [formerly 18C], requires the reporting of customer complaints that would be reportable on Form U4, under Question 14I(3)(a) or (b), if the individual were still employed by the firm, and the complaint was not previously reported on the individual's Form U4.
13. Out of a random sample of 323 of approximately 2,800 written customer complaints that Respondent received but did not disclose on Forms U4 and U5 for the period January 1, 2002 through December 31, 2004, Respondent failed to report 19 complaints that were reportable under Question 14I(3) of Form U4 or Question 7E(3) of Form U5.³ Additionally, out of another sample of 194 written customer complaints that Respondent received but did not disclose for the period January 2002 through December 2004, Respondent failed to report an additional five complaints that were reportable under Question 14I(3) of Form U4 or Question 7E(3) of Form U5. The subject 24 complaints from the two samples were reportable under either Question 14I(3) of Form U4 or Question 7E(3) of Form U5 insofar as they (i) alleged a sales practice violation, and (ii) contained a claim for compensatory damages of \$5,000 or more.
14. By reason of the conduct described in paragraph "II.A.13," Respondent violated Article V, Sections 2(c) and 3(b) of NASD's By-Laws and NASD Conduct Rule 2110.

**RESPONDENT FAILED TO FILE CERTAIN FORMS U5 TIMELY
AND WITH ACCURATE TERMINATION DATES**

15. Article V, Section 3(a) of NASD's By-Laws provides that a member firm shall notify NASD within thirty (30) days of the termination of a registered person's association with a member firm. The prescribed process is for the member firm to file with NASD a Form U5 with respect to the person terminated.
16. From January 1, 2002 through June 18, 2003, out of 48 Forms U5 that Respondent filed concerning retired registered persons who participated in its Retiring Broker Program (the "Program") through March 31, 2003, Respondent filed 31 Forms U5 (64.58%) late, and 32 Forms U5 (66.67%) with inaccurate termination dates, which were inconsistent with the dates when the persons were terminated from the Program.
17. By reason of the conduct described in paragraph "II.A.16," Respondent violated Article V, Section 3(a) of NASD's By-Laws and NASD Conduct Rule 2110.

³ Two of the non-disclosures pertained to an identical complaint against two different registered representatives.

- B. Respondent also consents to the imposition, at a maximum, of the following sanctions:
1. A censure;
 2. A fine in the amount of \$370,000; and
 3. Respondent shall comply with the following undertakings within the time periods specified (unless otherwise extended in writing by NASD staff):
 - a. Promptly following notice of acceptance of this AWC, Respondent shall conduct an audit, applying reasonable auditing standards, to assess the effectiveness of Respondent's system and procedures during the period January 1, 2007 through June 30, 2007, for achieving compliance with Respondent's reporting obligations under NASD By-Laws, Article V, Sections (2)(c) and 3(b) with respect to the timely filing of required Forms U4 and U5, and amendments thereto, relating to Question 14 on Forms U4 and Question 7 on Forms U5.
 - b. The audit shall not be conducted by personnel directly responsible for Respondent's compliance with NASD By-Laws, Article V, Sections (2)(c) and 3(b) or their immediate supervisors.
 - c. Within 90 days of the acceptance of this AWC, Respondent shall prepare a written audit report ("Audit Report") summarizing the findings and recommendations of the audit.
 - d. The Audit Report shall describe the method and scope of the audit, list late filings, if any, as identified by the audit, and make any appropriate recommendations to improve Respondent's system and procedures with respect to the timely filing of required Forms U4 and U5, and amendments thereto, relating to Question 14 on Forms U4 Question 7 on Forms U5.
 - e. No later than 120 days after acceptance of this AWC, an officer of Respondent shall certify in writing to NASD Staff that:
 - (i) Respondent has conducted the required audit and has prepared the Audit Report;
 - (ii) The officer has reviewed the Audit Report;
 - (iii) Respondent has implemented any recommendations set forth in the Audit Report, or has engaged in a process that will result in the

implementation of any such recommendations within a reasonable time period to be specified in such written certification; and

- (iv) Respondent has in place processes to establish systems and procedures reasonably designed to achieve compliance with the reporting requirements set forth in Article V, Section (2)(c) and 3(b) of NASD's By-Laws.

The sanctions imposed herein shall be effective on a date set by NASD staff.

III.

OTHER MATTERS

- A. 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.
- B. 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.
- C. Respondent 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 it to submit the AWC.

6/29/07
Date

UBS Financial Services, Inc.

By: *[Signature]*
Name: Haren Mincavage
Title: Senior Deputy General Counsel

Reviewed by:
[Signature]
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Accepted by NASD:

10/24/07
Date

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

[Signature]
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