

**NYSE ARCA, INC.**  
**LETTER OF ACCEPTANCE, WAIVER, AND CONSENT**  
**NO. 2018058781103**

TO: NYSE Arca, Inc.  
c/o Department of Enforcement  
Financial Industry Regulatory Authority (“FINRA”)

RE: UBS Securities, LLC, Respondent  
CRD No. 7654

**From January 1, 2017 through June 8, 2018, UBS Securities, LLC (“UBS” or the “Firm”) violated § 15(c)(3) of the Securities Exchange Act of 1934 (“Exchange Act”), as amended, Rule 15c3-5 promulgated thereunder (“Exchange Act Rule 15c3-5”), and NYSE Arca Equities Rule 6.18 and NYSE Arca Rule 11.18(b)<sup>1</sup> by failing to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial risks of its market access business activity. Some of the Firm’s financial risk management controls and supervisory procedures within the Firm’s smart order router, the Oscar Smart Order Routing System (“SOR”), were not reasonably designed to prevent the entry of erroneous orders. In addition, from January 1, 2017 through October 31, 2018, the Firm’s supervisory system was not reasonably designed with respect to the Firm’s documentation of soft block reviews of orders paused by the Oscar SOR erroneous order controls. Consent to censure and a fine in the amount of \$90,000 (resolved simultaneously with similar matters for a total fine of \$250,000).<sup>2</sup>**

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Pursuant to Rule 10.9216 of the NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) Code of Procedure, UBS 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, NYSE Arca will not bring any future actions against the Firm 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 NYSE Arca, or to which NYSE Arca 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 NYSE Arca:

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<sup>1</sup> On August 17, 2017, NYSE Arca Equities Rule 6.18 was denominated NYSE Arca Rule 11.18.

<sup>2</sup> Those matters were brought by The Nasdaq Stock Market LLC (“Nasdaq”) and FINRA.

## **BACKGROUND AND JURISDICTION**

1. UBS became registered as an Options Trading Permit (“OTP”) holder with NYSE Arca on June 30, 1998 and became registered as an Equities Trading Permit (“ETP”) holder with NYSE Arca on March 11, 2002. The Firm is headquartered in New York, New York, and is a wholly owned subsidiary of UBS AG, a publicly owned Swiss banking company. UBS employs approximately 1,900 registered persons operating out of 25 branch office locations, and provides investment banking, research, and sales and trading services mainly to corporate and institutional clients.

## **VIOLATIONS**

### **Applicable Rules**

2. Exchange Act § 15(c)(3) prohibits broker-dealers from contravening the rules and regulations prescribed by the Securities and Exchange Commission (SEC) to “provide safeguards with respect to the financial responsibility and related practices of brokers and dealers.”
3. Exchange Act Rule 15c3-5(b) requires that a “broker or dealer with market access, or that provides a customer or any other person with access to an exchange or alternative trading system through use of its market participant identifier or otherwise, shall establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.”
4. Exchange Act Rule 15c3-5(c)(1) requires broker-dealers to establish financial risk management controls and supervisory procedures “reasonably designed to systematically limit the financial exposure of the broker or dealer that could arise as a result of market access....”
5. Exchange Act Rule 15c3-5(c)(1)(ii) requires broker-dealers to establish financial risk management controls and supervisory procedures reasonably designed to “[p]revent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.”
6. NYSE Arca Rule 11.18(b)—like its predecessor NYSE Arca Equities Rule 6.18—requires each member firm to “establish and maintain a system to supervise the activities of its associated persons and the operations of its business. Such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Arca Rules.”

### **Unreasonably Designed Erroneous Order Controls**

#### ***Oscar SOR Controls***

7. Between January 1, 2017 and June 8, 2018, equity orders routed through the Oscar

SOR to the Firm's "high touch" desks were subjected to a single order notional control. This erroneous order control would pause or reject an order when the order exceeded a pre-configured limit, which ranged from \$75 million to \$200 million, depending on which "high touch desk" received the order. UBS could not provide a reasonable basis or documentation to demonstrate the reasonableness of the thresholds.

8. In addition, from January 1, 2017 to June 8, 2018, equity orders routed through the Oscar SOR were subjected to a percentage of the security's 20-day average daily volume ("ADV") control. The ADV control would suspend orders for manual review if the order quantity was greater than the corresponding threshold, which ranged from 25% to 100% between January 1, 2017 and March 5, 2018, and 20% to 95% between March 6, 2018 and June 2018. The ADV control thresholds also were set too high to be reasonably designed to prevent the entry of erroneous orders, absent additional reasonably designed controls. Furthermore, the Firm could not provide a reasonable basis or documentation to demonstrate that the thresholds were set at a level reasonably designed to prevent the entry of erroneous orders.
9. Between January 1, 2017 and May 3, 2017, the Oscar SOR employed various market access controls for limit orders, including, but not limited to, an ADV control and price controls that paused limit orders which exceeded thresholds based on certain percentages away from the current National Best Bid or Offer ("NBBO") or the last trade. However, during this period, the Oscar SOR did not have any controls to address the potential price impact of erroneous market orders that could materially move the price of a security.
10. Beginning on May 4, 2017, the Firm implemented a functionality to set limit prices on Direct Market Access ("DMA") orders within the Oscar SOR until the order was fully executed. The SOR functionality converted market orders to limit orders, which were priced based on a predetermined percentage from the NBBO at the time each child order was created, regardless of the NBBO when the order was received. However, this functionality, absent other controls, was not reasonably designed to prevent the entry of erroneous orders because it failed to include a price benchmark, such as the NBBO at the time of order receipt. As such, the functionality could append limit prices at successively higher or lower prices on each child limit order, potentially causing an erroneous order with significant price impact.
11. In fact, the suite of controls in place during the above period failed to prevent a market event that took place on November 15, 2017. On that date, a customer entered a premarket Good-Till-Crossing ("GTX") limit order to buy 50,000 shares of a security, which was cancelled and replaced with an erroneous GTX market order. The functionality appended successively higher prices on the child limit orders created and executed, and the price of the security rapidly moved from \$3.94 to \$7.40, an 88% increase. Subsequently, UBS implemented an arrival control that pauses child limit orders if they are priced more than a certain percentage away from the NBBO price at the time the order arrived.

### **Unreasonable Supervisory System Concerning the Review of Soft Blocks**

12. The Firm also failed to establish a supervisory system reasonably designed to achieve compliance with Rule 15c3-5(c)(ii)—specifically in connection with the Firm’s use of soft blocks for the Oscar SOR erroneous order controls.
13. From January 1, 2017 through October 31, 2018, the Firm’s Market Access Procedures provided that if an erroneous order control triggered a soft block, the personnel reviewing the order must consider numerous specified factors, as relevant, and, if overriding the soft block, document the reason for resuming the order and allowing it to proceed to the market. They also provided that UBS supervisors must review on a weekly basis reports of orders that were paused or rejected due to the Firm’s erroneous and duplicative order controls and determine, among other things, the reasons for release or rejection of a paused order in the Oscar SOR.
14. However, the Firm’s supervisory system for reviewing resumed orders was unreasonable because the system for documenting the resume reason offered a limited selection of reasons for allowing the order to proceed that did not capture the specified factors in the Firm’s procedures. For example, the majority of paused orders released to market had a reason of “reviewed by UBS” without additional basis or reason. As a result, the reports utilized by UBS supervisors did not enable them to determine the reason(s) supporting release of a paused order in the Oscar SOR or if the firm’s erroneous and duplicative order controls were functioning as intended. The Firm identified the issued and remediated it in November 2018.
15. Accordingly, in connection with the conduct described in paragraphs 7-14, UBS violated Exchange Act § 15(c)(3), Rule 15c3-5(c)(1) thereunder, NYSE Arca Equities Rule 6.18, and NYSE Arca Rule 11.18(b) during the Relevant Period.

### **RELEVANT PRIOR DISCIPLINARY HISTORY**

16. In November 2015, in connection to STAR No. 20120323306, UBS consented to a censure and a fine of \$1.25 million imposed by nine self-regulatory organizations (“SROs”), including NYSE Arca, for failing to have financial risk management controls reasonably designed to prevent the entry of erroneous equity or options orders, and orders that exceeded appropriate pre-set credit thresholds in the aggregate for customers, in violation of Rule 15c3-5. Additionally, UBS failed to have a written description of its risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of market access in violation of Rule 15c3-5 and the related supervisory rules of the SROs.

### **SANCTIONS**

- B. The Firm also consents to the imposition of the following sanctions:
  1. Censure and a fine in the amount of \$90,000 (resolved simultaneously with

similar matters for a total fine of \$250,000).<sup>3</sup>

Acceptance of this AWC is conditioned upon acceptance of a parallel settlement agreement in the same matter between the Firm and FINRA and the Nasdaq Stock Market.

The Firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. The Firm has submitted a Method of Payment Confirmation form showing the method by which it will pay the fine imposed.

The Firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

The Firm agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any fine amounts that the Firm pays pursuant to this AWC, regardless of the use of the fine amounts. The Firm further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any fine amounts that the Firm pays pursuant to this AWC, regardless of the use of the fine amounts.

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

## **II. WAIVER OF PROCEDURAL RIGHTS**

The Firm specifically and voluntarily waives the following rights granted under the NYSE Arca Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the Firm;
- 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 Exchange's Board of Directors and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the Firm specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer of NYSE Arca; the Exchange's Board of Directors, Disciplinary Action Committee ("DAC"), and Committee for Review ("CFR"); any Director, DAC member, or CFR member; Counsel to the Exchange Board of Directors or CFR; any other NYSE Arca employee; or any Regulatory Staff as defined in NYSE Arca Rule 10.9120 in connection with such person's or body's participation in discussions regarding the terms and conditions of this

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<sup>3</sup> Those matters were brought by Nasdaq and FINRA.

AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The Firm further specifically and voluntarily waives any right to claim that a person violated the ex parte communication prohibitions of NYSE Arca Rule 10.9143 or the separation of functions prohibitions of NYSE Arca Rule 10.9144, 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**

The Firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed by NYSE Regulation, and accepted by the Chief Regulatory Officer of NYSE Arca pursuant to NYSE Arca Rule 10.9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firm; and
- C. If accepted:
  - 1. The AWC shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means, and shall be deemed final and shall constitute the complaint, answer, and decision in the matter, 10 days after it is sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to NYSE Arca Rule 10.9310(a)(1)(B);
  - 2. This AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by the Exchange, or any other regulator against the Firm;
  - 3. NYSE Arca shall publish a copy of the AWC on its website in accordance with NYSE Arca Rule 10.8313;
  - 4. NYSE Arca may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE Arca Rule 10.8313; and
  - 5. The Firm 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. The Firm may not take any position in any proceeding brought by or on behalf of the Exchange, or to which the Exchange is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Exchange is not a party.

- D. A signed copy of this AWC and the accompanying Method of Payment Confirmation form delivered by email, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.

The Firm certifies that, in connection with each of the Exchange's requests for information in connection with this matter, the Firm made a diligent inquiry of all persons and systems that reasonably had possession of responsive documents and that all responsive documents have been produced. In agreeing to the AWC, the Exchange has relied upon, among other things, the completeness of the document productions and the privilege log.

The undersigned, on behalf of the Firm, 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 it 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 herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

April 8, 2022

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Date

UBS Securities, LLC,  
Respondent

By: Eric Bernstein  
Eric Bernstein  
Executive Director & Senior Regulatory Counsel

Accepted by FINRA

April 8, 2022

\_\_\_\_\_  
Date

Luis A. Prieto  
Luis A. Prieto  
Principal Counsel  
FINRA, Department of Enforcement

Signed on behalf of NYSE Arca, Inc., by delegated authority from its Chief Regulatory Officer