

**NASDAQ OMX BX, INC.  
NOTICE OF ACCEPTANCE OF AWC**

**Certified, Return Receipt Requested**

**TO: UBS Financial Services Inc.  
Ms. Ilene Marquardt  
Managing Director  
1000 Harbor Blvd.  
8<sup>th</sup> Floor  
Compliance Department  
Weehawken, NJ 07086**

**FROM: The NASDAQ OMX BX, Inc. (the "Exchange")  
c/o Financial Industry Regulatory Authority ("FINRA")  
Department of Market Regulation  
9509 Key West Avenue  
Rockville, MD 20850**

**DATE: December 16, 2013**

**RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20100214915-01**

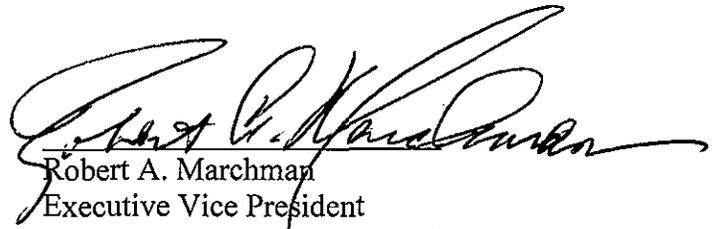
**Please be advised** that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted by the Exchange Review Council's Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the Exchange Review Council, pursuant to Nasdaq OMX BX Rule 9216. A copy of the AWC is enclosed herewith.

You are again reminded of your obligation, if currently registered, immediately to update your Uniform Application for Broker-Dealer Registration ("Form BD") to reflect the conclusion of this disciplinary action. Additionally, you must also notify FINRA (or the Exchange if you are not a member of FINRA) in writing of any change of address or other changes required to be made to your Form BD.

You will be notified by the Registration and Disclosure Department regarding sanctions if a suspension has been imposed and by the Nasdaq's Finance Department regarding the payment of any fine if a fine has been imposed.

UBS Financial Services Inc.  
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If you have any questions concerning this matter, please call Theresa Clarkson, Counsel,  
at (212) 858-4326.



Robert A. Marchman  
Executive Vice President  
Department of Market Regulation, FINRA

Signed on behalf of Nasdaq OMX BX, Inc.

Enclosure

FINRA District 9 – New Jersey  
Gary K. Liebowitz  
Regional Director  
581 Main Street  
7th Floor  
Woodbridge, NJ 07095-1164

Kerry Zinn, Esq.  
Executive Director  
UBS Financial Services, Inc.  
401 East Las Olas Blvd., Suite 2300  
Fort Lauderdale, FL 33301  
(kerry.zinn@ubs.com)

**NASDAQ OMX BX, INC.**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 20100214915-01**

TO: NASDAQ OMX BX, Inc.  
c/o Department of Market Regulation  
Financial Industry Regulatory Authority ("FINRA")

RE: UBS Financial Services Inc., Respondent  
Broker-Dealer  
CRD No. 8174

Pursuant to Chapter XXX of the Grandfathered Rules of NASDAQ OMX BX, Inc.<sup>1</sup> (the "Exchange")<sup>2</sup> and Rule 9216 of the Exchange Code of Procedure, UBS Financial Services Inc. (the "Firm" or "PWJC") 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, the Exchange will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. PWJC 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 the Exchange, or to which the Exchange 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 the Exchange:

**BACKGROUND**

PWJC has been a FINRA member since October 13, 1936, and the Firm's registration remains in effect. The Firm became a Participant of the Boston Options Exchange ("BOX")<sup>3</sup> on February 14, 2005, when its Options Participation Agreement was accepted by the Exchange. Under the terms of that agreement, the Firm agreed, among other things, to be bound by the Rules of the Exchange, as amended, including the BOX Trading Rules, and to be subject to the Exchange's jurisdiction and oversight.

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<sup>1</sup> The applicable Rules and authority for this action can be found in the By-Laws of NASDAQ OMX BX, Inc., the Rules of NASDAQ OMX BX ("The Equities Rules") and the Grandfathered Rules of the Exchange.

<sup>2</sup> Please note, for purposes of this AWC, "Exchange" includes NASDAQ OMX BX, Inc.

<sup>3</sup> BOX became a facility of NASDAQ OMX BX in August 2008.

## **RELEVANT DISCIPLINARY HISTORY**

Respondent has no relevant formal disciplinary history.

## **SUMMARY**

In connection with matter 20100214915, on behalf of BOX, FINRA staff (the "staff") conducted a review of the Firm's reporting to the Options Clearing Corporation ("OCC") Large Options Positions Report ("LOPR") commencing January 19, 2010 and continuing thereafter for compliance with BOX Trading Rules Chapter III, Sections 2(a)(i) and 10.

## **FACTS AND VIOLATIVE CONDUCT**

### **Reporting of Options Positions**

1. LOPR data is used extensively by self-regulatory organizations ("SROs") as they conduct reviews that have the ultimate goal of identifying and deterring the establishment of options positions that may provide an incentive to manipulate the underlying market.
2. The accuracy of LOPR data is essential for the analysis of potential violations related to insider trading, position limits, exercise limits, front-running, capping and pegging, mini-manipulation, and marking-the-close.
3. When reporting to the OCC LOPR during the relevant periods herein, firms were required to make an In Concert Group<sup>4</sup> Submission: (i) to report a new In Concert Group or a new account within an In Concert Group and/or (ii) to eliminate an existing In Concert Group or eliminate an account within an existing In Concert Group.
4. During the period between January 19, 2010 and August 13, 2010, PWJC had a total of 7,013,401 LOPR submissions to the OCC.
5. Although PWJC filed In Concert Group Submissions to the OCC during the period between January 19, 2010 and August 13, 2010, the Account Number field in the Firm's LOPR submissions to the OCC contained digits<sup>5</sup> used for the Firm's internal surveillance that were not contained in the same field in the Firm's In Concert Group Submissions to the OCC, which prevented the OCC from automatically identifying and matching the LOPR position files with those reported in the Firm's In Concert Group Submissions. As a result, none of the

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<sup>4</sup> When reporting to the LOPR, an "In Concert Group" is created when a firm aggregates the reports of all accounts under common control or those acting in concert, as required by rule.

<sup>5</sup> The Firm included its financial advisor identification number, the security number for the reportable account, and a seven-digit account number on its LOPR filings, not in its Acting In Concert ("AIC") submissions; its AIC submissions only contained the seven-digit account number.

Firm's positions in the OCC LOPR included In Concert Group Identification numbers.

6. During the period between January 19, 2010 and February 4, 2013, a programming error in PWJC's proprietary system caused the Firm to fail to report to the OCC LOPR numerous AIC identification numbers for accounts that acted in concert. Based on a sampling of accounts during the period between August 14, 2010 and February 4, 2013, PWJC failed to report AIC identification numbers for approximately 767,744 positions linked to 899 accounts.
7. The conduct described in paragraphs one through six above constitutes a violation of Chapter III, Section 10 of the BOX Trading Rules.

#### Supervision

8. During the period between January 2010 and January 2013, PWJC failed to maintain an adequate system of supervision, including adequate written supervisory procedures and effective monitoring, reasonably designed to achieve compliance with Exchange rules relating to the obligations connected to options reporting and accounts acting in concert.
9. The conduct described in paragraph eight above constitutes a violation of Chapter III, Section 2(a)(i) of the BOX Trading Rules.

#### Other Considerations

In accepting this AWC, the Exchange considered: (i) PWJC self-detection during the first quarter of 2013 and subsequent prompt and detailed self-reporting to FINRA of its system issue that impacted the reporting of AIC identification numbers; and (ii) PWJC's expenditure of significant resources and expense towards the complete overhaul of its internal LOPR reporting system, including its implementation of an additional report to monitor options position limits and its enhancement of its technology systems regarding In Concert reporting and position limits.

B. The Firm also consents to the imposition of the following sanctions:

**A censure and a total fine of \$540,000.**

PWJC agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. PWJC has submitted an Election of Payment form showing the method by which they propose to pay the fine imposed.

PWJC specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter. The sanctions imposed herein shall be effective on a date set by the staff.

## II.

### WAIVER OF PROCEDURAL RIGHTS

PWJC specifically and voluntarily waives the following rights granted under the Rules of the Exchange and the Exchange Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the Firm in writing;
- 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 Review Council and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, PWJC specifically and voluntarily waives any right to claim bias or prejudice of the Chief Regulatory Officer, the Exchange Review Council, or any member of the Exchange Review Council, 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.

PWJC 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.

### III.

#### OTHER MATTERS

PWJC understands that:

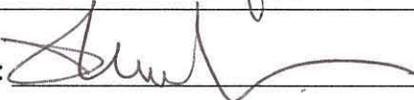
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by FINRA's Department of Market Regulation and the Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Exchange Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against PWJC and
- C. If accepted:
  - 1. This AWC will become part of PWJC's permanent disciplinary record and may be considered in any future actions brought by the Exchange or any other regulator against the firm;
  - 2. This AWC will be made available through FINRA's public disclosure program in response to public inquiries about PWJC's disciplinary record;
  - 3. The Exchange may make a public announcement concerning this agreement and the subject matter thereof in accordance with BX Rule 8310 and IM-8310-3; and
  - 4. PWJC 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. PWJC may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. PWJC 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 the Exchange, nor does it reflect the views of the Exchange or its staff.

The undersigned, on behalf of PWJC, 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 PWJC to submit it.

December 11, 2013  
Date

Respondent  
UBS Financial Services Inc.

By: Irene Marquardt

Name: 

Title: Managing Director

Reviewed by:

Kerry Finegan Elmi  
Counsel for Respondent

Firm Name: UBS Financial Services Inc.

Address: 401 E. Las Olas Blvd - Suite 1500, Ft. Lauderdale, FL  
33301

Telephone No.: 954 430-7817

Accepted by Nasdaq OMX BX, Inc.:

12/16/13  
Date



Robert A. Marchman  
Executive Vice President  
Department of Market Regulation  
Signed on behalf of Nasdaq OMX BX, Inc.,  
by delegated authority from the Director of  
ODA

### ELECTION OF PAYMENT FORM

PWJC intends to pay the fine proposed in the attached AWC by the following method (check one):

- A firm check or bank check for the full amount;
- Wire transfer;
- The installment payment plan.<sup>6</sup>
  - Monthly
  - Quarterly

Respectfully submitted,  
Respondent  
UBS Financial Services Inc.

December 11, 2013  
Date

By: Kerry Zanni  
Name: Kerry Zanni  
Title: Executive Director

<sup>6</sup> The installment payment plan is only available for a fine of \$50,000 or more. Certain requirements apply.