

**NYSE ARCA, INC.**  
**LETTER OF ACCEPTANCE, WAIVER, AND CONSENT**  
**NO. 2017-04-00071**

TO: NYSE Arca, Inc.

RE: UBS Securities LLC, Respondent  
CRD No. 7654

**During the period between March 1, 2015 to May 31, 2018 (the “Relevant Period”), UBS Securities LLC violated: (i) NYSE Arca Options Rule 6.77A<sup>1</sup> by busting and adjusting trades in a manner that circumvents other Exchange Rules; (ii) NYSE Arca Options Rule 11.1<sup>2</sup> by failing to comply with its due diligence and best execution obligations with respect to its handling of a customer orders; (iii) NYSE Arca Options Rules 6.68<sup>3</sup> and 9.17<sup>4</sup> and NYSE Arca Rules 2.28 and 11.16 by failing to create, maintain, and preserve accurate records of cancellations or adjustments to customer orders and for failing to create, maintain, and preserve accurate records of order receipt and order transmission times for orders manually routed for execution; and (iv) NYSE Arca Options Rule 11.18<sup>5</sup> by failing to establish and maintain adequate supervisory systems and written procedures that were reasonably designed to ensure compliance with NYSE Arca Options Rules. Consent to a censure, a \$490,000 fine, and an undertaking.**

\* \* \*

Pursuant to Rule 10.9216 of the NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) Code of Procedure, UBS Securities LLC (“UBS” or the “Firm”) 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

---

<sup>1</sup> NYSE Arca Options Rule 6.77A is now denominated NYSE Arca Rule 6.77A-O.

<sup>2</sup> NYSE Arca Options Rule 11.1 is now denominated NYSE Arca Rule 11.1.

<sup>3</sup> NYSE Arca Options Rule 6.68 is now denominated NYSE Arca Rule 6.68-O.

<sup>4</sup> NYSE Arca Options Rule 9.17 is now denominated NYSE Arca Rule 2.28.

<sup>5</sup> NYSE Arca Options Rule 11.18 is now denominated NYSE Arca Rule 11.18.

adjudication of any issue of law or fact, to the entry of the following findings by NYSE Arca:

### **BACKGROUND AND JURISDICTION**

1. The Firm became registered as an Options Trading Permit (“OTP”) holder with NYSE Arca on June 30, 1998. UBS is headquartered in New York, New York, and is a wholly owned subsidiary of UBS AG, a publicly-owned Swiss banking company. The Firm employs approximately 1,900 registered persons in 14 branch offices, and provides investment banking, research, and sales and trading services mainly to corporate and institutional clients.

### **VIOLATIONS**

#### *NYSE Arca Options Rule 6.77A (Improper Bust and Adjusts)*

1. Under NYSE Arca Options Rule 6.77A, “[a] trade on the Exchange may be nullified or adjusted if the parties to the trade agree to the nullification or adjustment. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that any trade that is nullified or adjusted pursuant to this Rule must be authorized by the Exchange prior to the nullification or adjustment.”
2. Furthermore, any trade that is adjusted pursuant to NYSE Arca Options Rule 6.77A “must be adjusted to a price that was permissible and in compliance with any applicable rules of the Exchange or the Securities and Exchange Commission.”
3. On December 13, 2013, NYSE Regulation released RBO-13-08 (“Nullification of Trades Based on Mutual Agreement”) to advise OTP Holders of the proper procedures for nullifying a trade pursuant to Exchange Rule 6.77 Commentary .02 (now Rule 6.77A). RBO-13-08 stated that “[t]he intent of the rule is not to permit trades to be cancelled due to intra-day price movement or other market activity related to the options class or the underlying security. In addition, trades that have been nullified should not be subsequently re-traded in order to circumvent any Exchange rules, including but not limited to, rules governing priority and trade allocation, trade reporting and broker best-ex obligations.”<sup>6</sup>
4. During the Relevant Period, UBS had a pattern and practice of nullifying executed trades, through a floor broker, and subsequently re-trading them, thereby circumventing Exchange rules, specifically trade-through rules.

---

<sup>6</sup> On November 6, 2018 (after the Relevant Period), NYSE published NYSE Arca Options RB-18-03, “Trade Nullification and Price Adjustment Rules and Procedures” (also published as NYSE American RB-18-164), which superseded NYSE Arca RBO-13-08. RB-18-03 reiterates the requirement of NYSE Arca Rule 6.77A-O to obtain agreement of all parties to nullify or adjust a trade. RB-18-03 also echoes RB-13-08 in its statement that “[A]ny ATP Holder, OTP Holder, or OTP Firm that engages in a pattern or practice to nullify and re-trade, or adjust trades, in manner that circumvents other Exchange rules, including but not limited to rules relating to trade-through, priority, and due diligence/best execution, or the federal securities laws, may be subject to disciplinary action.”

5. UBS instructed floor brokers to execute trades with the knowledge that the price agreed to by its customer was “out of range” (*i.e.*, would not fit the current market), with the intention of nullifying that execution and re-trading the order if and when the price did come back in range.
6. For example, in one transaction on October 4, 2016, a UBS trader (“UBS Trader 1”) relayed a customer order to an Arca floor broker (“Arca Floor Broker 1”) to sell 332 ABC<sup>7</sup> puts at \$1.00 (the “ABC Trade”), but stated that “this one you probably won’t be able to put on the tape right away . . . You’ll just have to wait to put em on, it’s a little out of range now.”
7. Arca Floor Broker 1 replied “You don’t want me to put something on, just to get something on the tape?” UBS Trader 1 said “Yeah, I guess you’ll have to put something on at some price, but then we’ll have to slide it up later if it comes back in range.” UBS Trader 1 subsequently called back and asked Arca Floor Broker 1 to aim for \$0.96.
8. A few minutes later, Arca Floor Broker 1 informed UBS Trader that he had printed the trade at \$0.88, and UBS Trader asked him to get as close to \$0.96 as possible. Approximately six minutes later, Arca Floor Broker 1 called back and informed UBS Trader 1 that he had busted the \$0.88 print and re-traded at \$0.96, to the benefit of UBS’s customer.
9. UBS Trader 1 testified that UBS handled similar situations in a similar manner (by executing the order at one price and then adjusting the price later if the agreed-upon price came back into range) until the summer of 2018. Arca Floor Broker 1 also testified that UBS had asked him to take a similar approach to other trades in the past. Indeed, NYSE Regulation found evidence of at least two other trades (in May and June 2017) where UBS engaged in this practice.
10. This approach of “printing in pencil” is disruptive to the market, could result in potential priority and trade-through violations, interferes with the ability of other market participants to participate on trades, and is in direct contravention of RBO-13-08.
11. For these reasons, UBS violated NYSE Arca Options Rule 6.77A during the Relevant Period.

*NYSE Arca Options Rule 11.1 (Just and Equitable Principles of Trade)*

12. NYSE Options Arca Rule 11.1 provides that a firm “shall at all times comply with just and equitable principles of trade, the applicable regulations of the Securities and Exchange Commission...and the Bylaws and Rules of the Exchange.”

---

<sup>7</sup> A generic identifier has been used in place of the name of certain options series.

13. In three different trades during the Relevant Period, UBS failed to comply with its due diligence and best execution obligations, in violation of NYSE Arca Options Rule 11.1.

The March 17, 2015 DEF Trade

14. On March 17, 2015, a UBS trader (“UBS Trader 2”) agreed to facilitate an order for a DEF put spread (the “DEF Trade”) with a customer. There are no records of the price agreed upon between UBS and its customer.
15. UBS Trader 2 relayed the order to an Arca floor broker (“Arca Floor Broker 2”). Arca Floor Broker 2 told UBS Trader 2 that he could do \$1.92. UBS Trader 2 immediately replied “try 1.93.”
16. The DEF Trade was executed at a net price of \$1.93 rather than \$1.92 (a price that was worse for the customer), resulting in harm to the customer in the amount of \$24,116 (as there are no records that the customer agreed to \$1.93 or any higher price).

The September 7, 2017 GHI Trade

17. On September 7, 2017, a Firm customer asked a UBS sales trader (“UBS Sales Trader 1”) for a quote to buy 4,646 GHI puts. Another UBS sales trader (“UBS Sales Trader 2”) reached out to a potential layoff counterparty (“Layoff Counterparty 1”) to see if they would be interested in participating on the other side of the trade and at what price.
18. Layoff Counterparty 1 replied “Let’s show 7.95.” Instead of conducting due diligence to determine whether \$7.95 was available for some or all of the order, UBS Sales Trader 2 immediately replied “Ok, we’ll show her eight bucks” (a price that was worse for the customer). Layoff Counterparty 1 replied “okay.”
19. The customer agreed to trade at a price of \$8.00, unaware that Layoff Counterparty 1 had initially suggested \$7.95.
20. The GHI Trade was executed at \$8.00, resulting in harm to the customer of \$12,500.

The February 5, 2018 JKL Trade

21. On February 5, 2018, a Firm customer contacted Sales Trader 2 looking to sell 3,500 JKL puts and to buy 2,750 JKL calls (the “JKL Trade”). The customer initially agreed to \$1.23 on the calls.
22. Sales Trader 2 subsequently called the customer back and asked “any chance I can get a couple pennies on the calls if that’s ok?” The customer agreed to that request.

23. Sales Trader 2 then called UBS Trader 1 and said “Take an extra nickel on the calls.” UBS Trader 1 replied “An extra nickel gets it to 1.28, right? Ok.”
24. The \$1.28 that Sales Trader 2 instructed UBS Trader 1 to execute was more than the “couple pennies” agreed to by the customer.
25. The JKL Trade was executed at prices up to \$1.28 on the calls leg, resulting in harm to the customer of \$6,928.
26. By providing prices that were worse for the customers in the DEF, GHI, and JKL Trades, the Firm violated NYSE Arca Options Rule 11.1 by failing to fulfill its best execution obligations.

*NYSE Arca Options Rules 6.68 (Record of Orders) and 9.17 (Books and Records); NYSE Arca Rules 2.28 and 11.16 (Books and Records)*

27. Under NYSE Arca Options Rule 6.68, every OTP Holder must maintain and preserve for the period specified under SEC Rule 17a-4, a record of every order and of any instruction given or received for the purchase or sale of option contracts. Such record must show the terms and conditions of the order or instruction and of any modification or cancellation thereof.
28. Under NYSE Arca Options Rule 9.17 (now NYSE Arca Rule 2.28), OTP Holders and OTP Firms must create and maintain all the books and records prescribed by the rules of the Exchange. RBO-13-08 and RBO 18-03 state that, accordingly, all OTP Holders must record and maintain an accurate account of all transactions subject to cancellation pursuant to Rule 6.77 (now Rule 6.77A-O), and all OTP Holders who fail to record and maintain an accurate record of all trade nullifications are in violation of Arca books and records rules.
29. Under NYSE Arca Rule 11.16, OTP Holders and OTP Firms must keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Exchange Act and the rules and regulations thereunder (including any interpretation relating thereto) as though such OTP Holder or OTP Firm were a broker or dealer registered with the SEC pursuant to Section 15 of the Exchange Act.
30. Section 17 of the Exchange Act and Rule 17a-3(a)(6)(i) thereunder, requires broker dealers, to create, “[a] memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof; the account for which entered; the time the order was received; the time of entry; the price at which executed.”
31. For certain orders during the Relevant Period:
  - a. The Firm failed to create and maintain accurate records of all order modifications and cancellations. Indeed, UBS Trader 1 testified that busted

and adjusted trades may not ever be reflected in the Firm's records.

- b. The Firm failed to create and maintain accurate records of the time at which the orders were transmitted for execution.
- c. The Firm failed to create and maintain accurate records of the time at which the orders were received.

32. Accordingly, the Firm violated NYSE Arca Options Rules 6.68 and 9.17, and NYSE Arca Rules 2.28 and 11.16 during the Relevant Period.

*NYSE Arca Options Rule 11.18 (Supervision)*

33. Under NYSE Arca Options Rule 11.18(b), firms must have supervisory systems in place that are "reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Arca rules."

34. NYSE Arca Options Rule 11.18(c) requires firms to have written supervisory procedures ("WSPs") in place to ensure that such supervisory systems are followed.

35. During the Relevant Period, the Firm failed to establish and maintain a supervisory system and procedures reasonably designed to ensure compliance with its bust and adjust obligations. Specifically, the Firm did not document any aspect of any busted and adjusted trade, including the bust/adjust instruction and the customer agreement, nor did its WSPs address bust and adjust requirements. Additionally, the Firm did not have any reviews in place related to compliance with its bust/adjust obligations.

36. During the Relevant Period, the Firm also failed to establish and maintain a supervisory system and procedures reasonably designed to ensure compliance with its best execution obligations. Specifically, the Firm's best execution review only covered its electronic orders in the aggregate, and did not have systems or WSPs that reviewed any manual options orders, including the orders in this matter.

37. Finally, during the Relevant Period, the Firm failed to establish and maintain a supervisory system and procedures reasonably designed to ensure the creation and retention of accurate records for its manual options orders, including:

- a. accurate records of all order modifications and cancellations;
- b. accurate records of the time at which the orders were received; and
- c. accurate records of the time at which the orders were transmitted for execution.

38. Accordingly, the Firm violated NYSE Arca Options Rule 11.18 during the Relevant Period.

## **OTHER FACTORS CONSIDERED**

39. In 2018 and 2019, UBS issued new guidance concerning trade nullifications and adjustments and adopted new written supervisory procedures concerning the best execution of manual options orders, addressing certain of the issues raised by NYSE Regulation's investigation.
40. Moreover, in connection with NYSE Regulation's investigation, UBS offered the customers who were impacted by the aforementioned DEF, GHI, and JKL trades restitution in the amount of \$43,544 (in total).

## **SANCTIONS**

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

### **1. Censure and fine in the amount of \$490,000**

The Firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are 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(s) 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.

### **2. Undertaking**

Within 180 days of the execution of this AWC, the Firm agrees to provide a certification that the Firm has taken reasonable steps to ensure the accurate recording of: (1) the times that verbal orders are received from clients; (2) the times that orders are submitted to the floor for execution; and (3) any cancellations of orders and new executions.

## **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 Rule 10.9120 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.

The Firm further specifically and voluntarily waives any right to claim that a person violated the ex parte communication prohibitions of Rule 10.9143 or the separation of functions prohibitions of 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, 25 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.
- E. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of NYSE Regulation or its staff.

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.

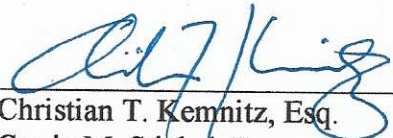
The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, 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, 2020  
Date

UBS Securities LLC,  
Respondent

By:   
D. Christopher Walker, Esq.  
Executive Director & Counsel

Reviewed by:

  
Christian T. Kemnitz, Esq.  
Carrie M. Stickel, Esq.  
Katten Muchin Rosenman LLP  
525 W. Monroe Street  
Chicago, IL 60661-3693  
(312) 902-5200  
Counsel for Respondent

Accepted by NYSE Regulation

April 8, 2020  
Date

Mark S. Silver  
Enforcement Counsel  
NYSE Regulation

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

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.

\_\_\_\_\_  
Date

UBS Securities LLC,  
Respondent

By: \_\_\_\_\_  
D. Christopher Walker, Esq.  
Executive Director & Counsel

Reviewed by:

\_\_\_\_\_  
Christian T. Kemnitz, Esq.  
Carrie M. Stickel, Esq.  
Katten Muchin Rosenman LLP  
525 W. Monroe Street  
Chicago, IL 60661-3693  
(312) 902-5200  
Counsel for Respondent

Accepted by NYSE Regulation

\_\_\_\_\_  
April 9, 2020  
Date



\_\_\_\_\_  
Mark S. Silver  
Enforcement Counsel  
NYSE Regulation

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