

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the  
Continued Membership  
of

UBS Financial Services, Inc.  
(CRD No. 8174)

Notice Pursuant to  
Rule 19h-1  
Securities Exchange Act  
of 1934<sup>1</sup>

SD-2341

**December 12, 2023**

**I. Introduction**

On October 14, 2022, UBS Financial Services, Inc. (“UBS” or “Firm”) submitted a Membership Continuance Application (“MC-400A” or “Application”) to FINRA’s Credentialing, Registration, Education, and Disclosure Department (“CRED”).<sup>2</sup> The Application seeks to permit the Firm, a FINRA member, to continue its membership with FINRA notwithstanding its statutory disqualification. A hearing was not held in this matter; rather, pursuant to FINRA Rule 9523(b), FINRA’s Department of Member Supervision (“FINRA,” “Member Supervision,” or “Department”) approves the Application and is filing this Notice pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 (“Exchange Act” or “SEA”).

**II. The Statutorily Disqualifying Event**

The Firm is subject to statutory disqualification, as that term is defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(D) and (E), as a result of a September 2022 Order issued by the Securities and Exchange Commission (“SEC” or “Commission”) finding UBS willfully violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) and failed reasonably to supervise its employees with a view to preventing or detecting certain of its employees’ aiding and abetting violations of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder (the “SEC Order”).<sup>3</sup> According

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<sup>1</sup> This SEA Rule 19h-1 Notice, along with supporting Exhibits, addresses several technical issues and replaces the SEA Rule 19h-1 Notice filed by FINRA on October 25, 2023.

<sup>2</sup> See MC-400A Application and related attachments compiled by CRED, with a cover memorandum dated October 27, 2022, collectively attached as Exhibit 1.

<sup>3</sup> See SEC Order, *In re UBS Financial Services, Inc. and UBS Securities LLC*, Exchange Act Release No. 95929 (Sept. 27, 2022), attached as Exhibit 2. Member Supervision is filing a separate Notice pertaining to UBS’s affiliate UBS Securities LLC.

The SEC Order also triggered disqualification under Rules 262(a)(4), 506(d)(1)(iv), and 602(c)(3) of the Securities Act of 1933 and Rule 503(a)(4)(ii) of Regulation Crowdfunding. On September 27, 2022, the SEC granted a waiver from the application of the disqualification provisions of these Rules. See *In re*

to the SEC Order, from at least January 2018 to September 2021, employees of UBS sent and received off-channel communications that related to the Firm's business, and a majority of these written communications was not maintained or preserved by the Firm.<sup>4</sup> Further, supervisors who were responsible for preventing this misconduct among junior employees routinely communicated off-channel using their personal devices and in so doing failed to comply with Firm policies by communicating using non-Firm approved methods on their personal devices about the Firm's broker-dealer business.<sup>5</sup>

The Firm was ordered to cease and desist from committing or causing any future violations, censured, ordered to pay a civil money penalty of \$125,000,000, and ordered to comply with undertakings.<sup>6</sup>

### **III. Remedial Measures**

In its Application, the Firm represented that it has undertaken significant remedial measures in response to the SEC's findings, including requiring more frequent employee attestations regarding their understanding of the Firm's electronic communications policies, increasing the frequency and venues of written and verbal compliance reminders related to electronic communications, reviewing and upgrading relevant written policies on electronic communications, adding additional training content, evaluating the potential use of additional technology, and improving the process and procedures for gathering documents for review and investigation to ensure that electronic communications through unapproved channels are included.<sup>7</sup> According to the SEC Order, the SEC considered the Firm's prompt remedial actions and cooperation with the Commission when determining to accept the Offer of Settlement.<sup>8</sup>

### **IV. Firm Background**

The Firm has been a FINRA member since 1936.<sup>9</sup> It is headquartered in Weehawken, NJ with 808 branches, 323 of which are Offices of Supervisory Jurisdiction.<sup>10</sup> The Firm employs approximately 11,558 registered representatives (including 2182 registered principals) and 16,689 non-registered fingerprint employees.<sup>11</sup> It employs six statutorily

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*Certain Broker-Dealer Practices*, Securities Act Release No. 11109 (Sept. 27, 2022), attached as Exhibit 3.

<sup>4</sup> See Exhibit 2 at p. 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at p. 10. The SEC ordered that UBS and its affiliate UBS Securities LLC jointly and severally pay the \$125,000,000 penalty. *Id.* The Firm represents that this amount was fully paid on October 7, 2022. See Exhibit 1 at FINRA00016. See also Exhibit 18 at p. 1, Response 1.

<sup>7</sup> See Exhibit 1 at FINRA00047, 00051-53.

<sup>8</sup> See Exhibit 2 at p. 6.

<sup>9</sup> See CRD Excerpt: Organization Registration Status, attached as Exhibit 4.

<sup>10</sup> FINRA confirmed this through analysis of the Firm's information contained in the Central Registration Depository ("CRD"), last performed on September 18, 2023.

<sup>11</sup> *Id.*

disqualified individuals.<sup>12</sup>

UBS is approved to engage in the following lines of business: exchange member engaged in exchange commission business other than floor activities; exchange member engaged in floor activities; broker or dealer making inter-dealer markets in corporate securities over-the-counter; broker or dealer retailing corporate equity securities over-the-counter; broker or dealer selling corporate debt securities; underwriter or selling group participant (corporate securities other than mutual funds); mutual fund underwriter or sponsor; mutual fund retailer; U.S. government securities dealer; U.S. government securities broker; municipal securities dealer; municipal securities broker; broker or dealer selling variable life insurance or annuities; solicitor of time deposits in a financial institution; broker or dealer selling gas or oil interests; put and call broker or dealer or option writer; broker or dealer selling securities of non-profit organizations; investment advisory services; broker or dealer selling tax shelters or limited partnerships in primary distributions; broker or dealer selling tax shelters or limited partnerships in the secondary market; trading securities for own account; private placements of securities; broker or dealer selling interests in mortgages or other receivables; broker or dealer involved in a networking, kiosk, or similar arrangement with an insurance company or agency; effects transactions in commodity futures, commodities, commodity options as broker for others or dealer for own account; and other non-securities business such as engaging in swaps.<sup>13</sup>

The Firm is a member of the following self-regulatory organizations (“SROs”): BOX Exchange LLC (“BOX”); Cboe Exchange, Inc. (“Cboe”); NYSE American LLC (“NYSE American”); NYSE Arca, Inc. (“NYSE Arca”); NYSE Chicago, Inc. (“NYSE Chicago”); Nasdaq ISE, LLC (“ISE”); Nasdaq PHLX LLC (“PHLX”); The Nasdaq Stock Market LLC (“Nasdaq”); New York Stock Exchange LLC (“NYSE”);<sup>14</sup> Municipal Securities Rulemaking Board (“MSRB”); The Depository Trust Company (“DTC”); the Fixed Income Clearing Corporation Government Securities Division (“FICC-GOV”); and the National Securities Clearing Corporation (“NSCC”).<sup>15</sup>

### **Recent Examinations**

In the past two years, FINRA completed two routine examinations, one of which was conducted on behalf of other SROs including BOX, Cboe, ISE, PHLX, NYSE, NYSE Arca, NYSE American, and NYSE Chicago pursuant to Regulatory Service Agreements

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<sup>12</sup> *Id.* These individuals include John Jay Marvin (CRD No. 1313737) (Palm Beach Gardens, FL branch); Francis Joseph Dietrich (CRD No. 1882065) (Boston, MA branch); Jay P. Mechling (CRD No. 1238949) (Austin, TX branch); William Stephen Costas (CRD No. 1759628) (Westlake Village, CA branch); Phillip Tanner (CRD No. 6545683) (Indian Wells, CA branch); Lyle Edward Moss (CRD No. 857277) (Seattle, WA branch). *See* Appendix A.

<sup>13</sup> *See* CRD Excerpts: Types of Business and Other Business Descriptions, collectively attached as Exhibit 5.

<sup>14</sup> *See* Exhibit 4.

<sup>15</sup> Membership in these organizations was verified by FINRA staff through a search of public member directories, last performed on September 18, 2023.

(“RSAs”), and five non-routine examinations of the Firm that resulted in Cautionary Action Letters (“CAL”). The SEC also completed two examinations highlighting deficiencies in the Firm’s policies, procedures, and controls.

A. FINRA Routine Examinations

The examination completed in September 2022 resulted in a Cautionary Action for seven exceptions.<sup>16</sup> These exceptions pertained to failures to: timely report or record details of each order submitted to CAT; establish, maintain, and enforce written supervisory procedures (“WSPs”) reasonably designed to achieve compliance with CAT reporting; have adequate supervision for compliance with Regulation NMS; timely report accurate customer complaints to FINRA; adequately establish WSPs regarding the ultimate responsibility for supervising electronic communications; and accurately report municipal securities transactions to MSRB.<sup>17</sup> The Firm responded in writing that it took steps to correct the noted deficiencies by working with a third party to obtain additional guidance on CAT data reporting, developing a comparative data review procedure, enhancing its existing procedures, implementing additional education regarding the handling and reporting of customer complaints, and updating its technology.<sup>18</sup> One additional exception was referred to FINRA’s Department of Trading & Execution<sup>19</sup> and relates to the Firm’s failure to accurately provide an average price disclosure for a single execution on a transaction confirmation.<sup>20</sup> The Firm explained that it took remedial measures such as amending the confirmation language and using a third-party vendor to assist the Firm in making definitive statements on its confirmations.<sup>21</sup>

In September 2022, FINRA also issued a Cautionary Action to the Firm on behalf of Cboe, NYSE American, NYSE Arca, and PHLX for one exception related to the Firm’s failure to have an adequate supervisory process to ensure the Firm properly maintains accurate records of its options orders.<sup>22</sup> The Firm responded in writing, explaining the various systems it uses for recording its options orders and then worked with its third-party system vendor to help demonstrate to FINRA the adequacy of its recording system.<sup>23</sup>

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<sup>16</sup> See Disposition Letter for Examination No. 20210693295 dated September 13, 2022, Examination Report dated May 31, 2022, and Firm Response dated July 13, 2022, collectively attached as Exhibit 6.

<sup>17</sup> *Id.* at FINRA pp. 1, 5-11.

<sup>18</sup> *Id.* at FINRA pp. 13-39.

<sup>19</sup> *Id.* at FINRA p. 1. See also Matter No. 20220761563. As of the date of this Notice, the exception referred to Trading & Execution remains open.

<sup>20</sup> *Id.* at FINRA p. 9.

<sup>21</sup> *Id.* at FINRA pp. 30-32.

<sup>22</sup> See Disposition Letter for Examination No. 20210693296 dated September 13, 2022, Examination Report dated May 31, 2022, and Firm Response dated July 13, 2022, collectively attached as Exhibit 7.

<sup>23</sup> *Id.* at FINRA pp. 8-9.

## B. FINRA Non-Routine Examinations

In April 2023, FINRA issued a Cautionary Action to the Firm for failing to ensure that the Form U4 of one of its registered representatives was up to date and accurate regarding various outside business activity disclosures.<sup>24</sup>

In January 2023, FINRA issued a Cautionary Action to the Firm for violating FINRA rules regarding reporting data to the CAT Central Repository.<sup>25</sup> The Firm responded in writing that it already submitted its corrections for the impacted CAT events and began publishing its WSPs related to CAT.<sup>26</sup>

In November 2022, FINRA issued a Cautionary Action to the Firm for failing to disclose the accurate yield on customer confirmations and maintain a supervisory system reasonably designed to achieve compliance with the disclosure requirements for TRACE Eligible Securities.<sup>27</sup> The Firm responded in writing that it corrected the system issues that caused the inaccurate confirmations and updated its supervisory procedures.<sup>28</sup>

In October 2022, FINRA's Department of Enforcement ("Enforcement") issued a Cautionary Action to the Firm for failing to establish and maintain supervisory systems and written procedures that were reasonably designed to achieve compliance with the close-out obligations imposed by Rule 204 of Regulation SHO.<sup>29</sup>

In October 2021, FINRA issued a Cautionary Action to the Firm for failing to disclose the markup or markdown on confirmations to non-institutional customers on same-day, off-setting trades in municipal securities and corporate debt securities.<sup>30</sup> The Firm responded in writing that it re-issued confirmations to impacted customers and updated their procedures to address the issue.<sup>31</sup>

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<sup>24</sup> See Disposition Letter for Examination No. 20220738525 and Examination Report, dated April 19, 2023, collectively attached as Exhibit 8. The Firm did not provide a written response.

<sup>25</sup> See Disposition Letter for Examination No. 20210731446 dated January 17, 2023 and Firm Response dated January 26, 2023, collectively attached as Exhibit 9.

<sup>26</sup> *Id.* at FINRA p. 3.

<sup>27</sup> See Disposition Letter for Examination No. 20200686448 dated November 15, 2022 and Firm Response dated December 22, 2022, collectively attached as Exhibit 10.

<sup>28</sup> *Id.* at FINRA p. 3.

<sup>29</sup> See Disposition Letter for Examination No. 20170552238 dated October 3, 2022 (the Firm did not provide a written response), attached as Exhibit 11.

<sup>30</sup> See Disposition Letter for Examination No. 20200665013 dated October 4, 2021 and Firm Response dated October 28, 2021, collectively attached as Exhibit 12.

<sup>31</sup> *Id.* at FINRA p. 3.

### C. SEC Examinations

An SEC Examination concluded in September 2023 identified deficiencies relating to the Firm's failure to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with the Conflict of Interest Obligation and Compliance Obligation under Regulation Best Interest, particularly related to the private equity funds available on its brokerage and advisory platforms.<sup>32</sup>

An SEC Examination concluded in August 2022 identified a deficiency relating to the Firm's failure to establish, maintain and enforce written policies and procedures reasonably designed to achieve compliance with the Care Obligation and Disclosure Obligation under Regulation Best Interest and documenting recommendations to retail customers in the CRM system in accordance with its best practice guidance.<sup>33</sup> The Firm responded in writing that it will develop a plan to assess the instances that the SEC found deficient and enhance its processes to avoid repeat violations.<sup>34</sup>

### Regulatory Actions

In approximately the past two years, UBS has been the subject of eight disciplinary matters, besides the SEC Order at issue in this Notice. The Firm was subject to disciplinary matters brought by FINRA, the CFTC, the SEC, Cboe, and BOX.

#### A. FINRA Actions

On April 25, 2022, the Firm entered into a Letter of Acceptance, Waiver and Consent ("AWC") with FINRA in connection with the Firm's failure to timely report TRACE transactions in TRACE-eligible securities, in violation of FINRA Rules 6730(a) and 2010.<sup>35</sup> The AWC also found that the Firm failed to reasonably supervise its TRACE reporting, in violation of FINRA Rules 3110 and 2010.<sup>36</sup> The Firm consented to a censure, a \$350,000 fine, and an undertaking related to revision of the Firm's supervisory system.<sup>37</sup>

On December 20, 2021, the Firm entered into an AWC with FINRA in connection with the

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<sup>32</sup> See SEC Examination Letter for File No. 8-16267 dated September 28, 2023, attached as Exhibit 13. As of the date of this Notice, it appears that the Firm has not yet submitted a response.

<sup>33</sup> See SEC Examination Letter for File No. 8-16267 dated August 31, 2022 and Firm Response dated October 7, 2022, collectively attached as Exhibit 14.

<sup>34</sup> *Id.* at FINRA pp. 8-20.

<sup>35</sup> See FINRA AWC No. 2018060139001, dated April 25, 2022, CRD Disclosure for Occurrence 2200182, and Certification of Compliance with Undertakings dated August 26, 2022, collectively attached as Exhibit 15.

<sup>36</sup> *Id.* at FINRA p. 3.

<sup>37</sup> *Id.* FINRA confirmed that the Firm paid the fine on May 11, 2022. *Id.* at FINRA p. 8. The Firm also represented that it fully complied with the additional undertakings related to revision of its supervisory system and reported such to FINRA in August 2022. *Id.* at FINRA p. 12.

Firm's failure to establish and maintain a supervisory system reasonably designed to supervise 529 plan share-class recommendations, in violation of MSRB Rules G-27(a), (b), and (c).<sup>38</sup> The Firm consented to a censure and to pay \$4,059,652.95 in restitution.<sup>39</sup>

#### B. CFTC Action

On September 27, 2022, the CFTC issued an order finding that the Firm violated Section 4g of the Commodity Exchange Act (7 U.S.C. § 6g), and Commission Regulations 1.31, 1.35, and 166.3 (17 C.F.R. §§ 1.31, 1.35, and 166.3 (2021)).<sup>40</sup> These violations were based on the same misconduct underlying the SEC Order that is the subject of the Firm's Application. The Firm was ordered to cease and desist from violating the cited sections of the Commodity Exchange Act and Commission Regulations, to pay (jointly and severally) a \$75,000,000 civil penalty, and to comply with various undertakings related to the Firm's preservation of records related to electronic communications.<sup>41</sup>

#### C. Cboe Action

On November 8, 2021, Cboe issued a decision incorporating a Letter of Consent in connection with the Firm's failure to properly qualify and register an associated person as a securities trader principal, in violation of Cboe Rules 3.6A and 3.30.<sup>42</sup> The Firm consented to a censure and a \$15,000 fine.<sup>43</sup>

#### D. BOX Action

On September 30, 2021, the Firm entered into a Letter of Consent with BOX in connection with the Firm's failure to report certain reportable options positions and inaccurate reporting of other positions, in violation of BOX Rule 3150(a).<sup>44</sup> The Firm consented to a censure and a \$100,000 fine.<sup>45</sup>

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<sup>38</sup> See FINRA AWC No. 2019062532801, dated December 20, 2021, attached as Exhibit 16.

<sup>39</sup> *Id.* at FINRA p. 5. FINRA staff confirmed that the Firm mailed restitution checks to customers on April 7, 2022 and provided proof of payment to FINRA on April 19, 2022.

<sup>40</sup> See CFTC Order, *In re UBS AG, UBS Financial Services, Inc., and UBS Securities LLC*, CFTC Docket No. 22-42 (Sept. 27, 2022), attached as Exhibit 17. FINRA has determined that this is not a disqualifying event.

<sup>41</sup> *Id.* at pp. 9-13. The full amount of the civil penalty was paid on October 7, 2022. See Correspondence from Lari A. Dierks to FINRA dated December 16, 2022, attached as Exhibit 18 at p. 2, Response 2. Further, the Firm represented that it remains in compliance with the ordered undertakings. See Correspondence from Lari A. Dierks to FINRA dated June 21, 2023, attached as Exhibit 19.

<sup>42</sup> See Cboe Disciplinary Decision and Letter of Consent, *In re UBS Financial Services, Inc.*, File No. USE-2218-01 (Nov. 8, 2021), attached as Exhibit 20.

<sup>43</sup> *Id.* at FINRA p. 3. The Firm paid the fine on November 12, 2021. See Exhibit 18 at p. 2, Response 4.

<sup>44</sup> See BOX Letter of Consent No. 2018059264301, dated September 30, 2021, attached as Exhibit 21.

<sup>45</sup> *Id.* at p. 3. The Firm represents that it paid the fine on October 1, 2021. See Exhibit 18 at p. 2, Response

### E. SEC Actions and Other Statutory Disqualification Matters

In the last five years, the Firm was subject to five disqualifying SEC orders which did not result in a SEA Rule 19h-1 notice filing.

On July 27, 2022, the SEC issued an order finding that the Firm willfully violated Rule 201 of Regulation S-ID (17 C.F.R. § 248.201) by failing to adequately develop and implement a written identity theft prevention program.<sup>46</sup> Consequently, the Firm was censured, ordered to pay a \$925,000 civil penalty, and ordered to cease and desist from committing or causing future violations of Rule 201 of Regulation S-ID.<sup>47</sup>

On June 29, 2022, the SEC issued an order finding that the Firm willfully violated Section 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-7 thereunder by selling a complex investment strategy to investors via advisors with inadequate training and supervision.<sup>48</sup> Consequently, the Firm was ordered to pay a \$17.4 million civil penalty, \$5.8 million in disgorgement, plus \$1.4 million in prejudgment interest.<sup>49</sup>

On July 19, 2021, the SEC issued an order finding that the Firm willfully violated Section 206(4) of the Investment Advisers Act of 1940 and Advisers Act Rule 206(4)-7 by failing to adopt and implement written policies and procedures reasonably designed to prevent unsuitable investments in volatility-linked exchange traded products.<sup>50</sup> Consequently, the Firm was censured, ordered to pay an \$8,000,000 civil penalty along with disgorgement of \$96,344 and \$15,930 in prejudgment interest, and was ordered to cease and desist from committing or causing future violations of the above-mentioned statutes and rules.<sup>51</sup>

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<sup>46</sup> See *In re UBS Financial Services Inc.*, Exchange Act Release No. 95368 (July 27, 2022), attached as Exhibit 22. This order subjects the Firm to statutory disqualification as defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(D).

<sup>47</sup> *Id.* at pp. 7-8. The Firm provided FINRA an affirmation that it fully paid the civil penalty on July 28, 2022 and that the sanctions were no longer in effect. Since there are no sanctions in effect for statutory disqualification purposes, an application to continue in membership is no longer required under FINRA rules. As such, a 19h-1 Notice was not filed in connection with this matter. See also [FINRA Regulatory Notice 09-19](#) (June 15, 2009).

<sup>48</sup> See *In re UBS Financial Services Inc.*, Exchange Act Release No. 95168 (June 29, 2022), attached as Exhibit 23. This order subjects the Firm to statutory disqualification as defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(D).

<sup>49</sup> *Id.* at pp. 7-11. The Firm previously provided FINRA with an affirmation that it fully paid the civil penalty on July 13, 2022 and the sanctions are no longer in effect, which it recently reiterated to FINRA staff. See Exhibit 18 at p. 2, Response 3. Since there are no sanctions in effect for statutory disqualification purposes, an application to continue in membership is no longer required under FINRA rules. As such, a 19h-1 Notice was not filed in connection with this matter.

<sup>50</sup> See *In re UBS Financial Services Inc.*, Advisers Act Release No. 5781 (July 19, 2021), attached as Exhibit 24. This order subjects the Firm to statutory disqualification as defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(D).

<sup>51</sup> *Id.* at pp. 8-12. The Firm previously provided FINRA an affirmation that it fully paid these amounts on August 3, 2021 and that the sanctions are no longer in effect, which it recently reiterated to FINRA staff.

On July 20, 2020, the SEC issued an order finding that the Firm willfully violated MSRB rules G-11(K), G-17, G-27, and Section 15B(c)(1) of the Exchange Act, by failing to reasonably supervise certain registered representatives and a member of its municipal bond syndicate desk, within the meaning of Exchange Act Section 15(b)(4)(E), in connection with retail orders for negotiated new issue municipal bonds.<sup>52</sup> Consequently, the Firm was censured, ordered to pay a \$1,750,000 civil penalty along with disgorgement of \$6,7400,000 and \$1,549,336 in prejudgment interest, and was ordered to cease and desist from violating or causing future violations of the above mentioned statutes and rules.<sup>53</sup>

On December 17, 2018, the SEC issued an order finding that the Firm willfully violated Exchange Act Section 17(a) and Rule 17a-8 thereunder because the Firm's anti-money laundering program was not reasonably designed to account for risks associated with bank-like services in their retail brokerage accounts and did not adequately monitor for, detect, and report suspicious activity.<sup>54</sup> Consequently, the Firm was censured, ordered to pay a \$5,000,000 civil penalty, and was ordered to cease and desist from violating or causing future violations of the above mentioned statutes and rules.<sup>55</sup>

## **V. Prior SEA Rule 19h-1 Notices**

FINRA filed two Rule 19h-1 Notices approving UBS' continued membership notwithstanding the existence of its statutory disqualification.

On May 7, 2014, FINRA filed a Rule 19h-1 Notice approving UBS' continued membership notwithstanding its statutory disqualification stemming from a December 22, 2008 judgment and permanent injunction entered in the United States District Court for the Southern District of New York that related to the Firm misleading customers regarding the

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*See* Exhibit 18 at p. 3, Response 6. Since there are no sanctions in effect for statutory disqualification purposes, an application to continue in membership is no longer required under FINRA rules. As such, a 19h-1 Notice was not filed in connection with this matter.

<sup>52</sup> *See In re UBS Financial Services Inc.*, Exchange Act Release No. 89348 (July 20, 2020), attached as Exhibit 25. This order subjects the Firm to statutory disqualification as defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(D) and Section 15(b)(4)(E).

<sup>53</sup> *Id.* at pp. 9-11. The Firm provided FINRA an affirmation that it fully paid these amounts on July 22, 2020 and that the sanctions are no longer in effect. Since there are no sanctions in effect for statutory disqualification purposes, an application to continue in membership is no longer required under FINRA rules. As such, a 19h-1 Notice was not filed in connection with this matter.

<sup>54</sup> *See In re UBS Financial Services Inc.*, Exchange Act Release No. 84828 (Dec. 17, 2018), and correspondence from the Firm to FINRA regarding compliance with the sanctions, dated February 6, 2019, collectively attached as Exhibit 26. This order subjects the Firm to statutory disqualification as defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(D).

<sup>55</sup> *Id.* at FINRA pp. 8-9. The Firm provided FINRA an affirmation that it fully paid this penalty and that the sanctions are no longer in effect. *Id.* at FINRA p. 10. Since there are no sanctions in effect for statutory disqualification purposes, an application to continue in membership is no longer required under FINRA rules. As such, a 19h-1 Notice was not filed in connection with this matter.

nature and risks of auction rate securities that the Firm underwrote, marketed, and sold.<sup>56</sup> The Commission acknowledged FINRA's Notice on August 21, 2014.<sup>57</sup>

On November 30, 2015, FINRA filed a Rule 19h-1 Notice approving UBS' continued membership notwithstanding its statutory disqualification stemming from a September 30, 2015 SEC order arising out of the Commission's Municipalities Continuing Disclosure Cooperation Initiative where the Firm self-reported to the SEC its inadequate due diligence in connection with underwriting certain municipal securities offerings.<sup>58</sup> The Commission acknowledged FINRA's Notice on January 6, 2016.<sup>59</sup>

## **VI. The Firm's Proposed Continued Membership with FINRA Plan of Heightened Supervision**

The Firm seeks to continue its membership with FINRA notwithstanding its status as a disqualified member. The Firm has agreed to the following Plan of Heightened Supervision ("Supervision Plan" or "Plan") as a condition of its continued membership with FINRA.<sup>60</sup>

UBS Financial Services, Inc. (the "Firm") is subject to statutory disqualification pursuant to 3(a)(39)(F) of the Securities Exchange Act of 1934, which incorporates by reference Sections 15(b)(4)(D) & (E), as a result of an order issued by the U.S. Securities and Exchange Commission dated September 27, 2022, which found that the Firm willfully violated Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4(b)(4) thereunder. The Order also found that the Firm failed to reasonably supervise its employees within the meaning of Section 15(b)(4)(E).

For the purpose of this Supervision Plan, the term "Digital Communication Channels" means all written electronic methods of communication used to conduct Firm business, including but not limited to, text message platforms, whether via SMS messaging, iMessage, or other messaging services such as WhatsApp; direct messaging platforms including Twitter, Instagram, LinkedIn, Slack, or Bloomberg Messaging; non-firm domain email accounts; and any other written electronic business-related correspondence. "Digital Communication Channels" encompass platforms used to exchange messages with internal or external stakeholders using either a personal or Firm-provided device.

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<sup>56</sup> See *In re the Continued Membership of UBS Financial Services, Inc. and UBS Securities, LLC*, SD-1757, SD-1758, and SD-1896 (FINRA May 7, 2014), and the SEC's Letter of Acknowledgement dated August 21, 2014, collectively attached as Exhibit 27.

<sup>57</sup> *Id.* at FINRA p. 14.

<sup>58</sup> See *In re the Continued Membership of UBS Financial Services, Inc. et al.*, SD-MCDC-036, SD-MCDC-037, SD-MCDC-043, SD-MCDC-050, SD-MCDC-051 (FINRA Nov. 30, 2015), and the SEC's Letter of Acknowledgement dated January 6, 2016, collectively attached as Exhibit 28.

<sup>59</sup> *Id.* at FINRA p. 6.

<sup>60</sup> See Executed Consent to Plan of Heightened Supervision dated September 14, 2023, attached as Exhibit 29.

For the purpose of this Supervision Plan, the term “Off-Channel Communications” means all business-related written electronic messages sent on Digital Communication Channels that are not captured by Firm surveillance and record-keeping systems.

In consenting to this Supervision Plan, the Firm agrees to the following:

1. The Firm shall comply with all of the undertakings outlined in the Securities and Exchange Commission (“SEC” or “Commission”) Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21(C) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, *In the Matter of UBS Financial Services, Inc. and UBS Securities LLC*, Exchange Act Release No. 95929 (September 27, 2022) (“SEC Order”).
2. The Firm shall maintain copies of all correspondence between the Firm and Commission staff relating to the SEC Order, including documenting when Commission staff grants extensions to the deadlines set forth in the SEC Order. The Firm shall maintain copies of all such correspondence in a segregated file for ease of review by FINRA staff.
3. The Firm shall provide FINRA’s Statutory Disqualification Group with copies of all certifications submitted to the SEC upon completion of the undertakings as specified in the SEC Order. The Firm shall also maintain copies of all certifications in a segregated file for ease of review by FINRA staff.
4. The Firm shall maintain copies of all reports and supporting documentation submitted to SEC staff in accordance with the SEC Order, as well as any other documentation needed to evidence the status and completion of each of the undertakings outlined in the SEC Order. The Firm shall maintain copies of such documentation in a segregated file for ease of review by FINRA staff.
5. Within six months of the SEC’s Letter of Acknowledgement in this matter (“LOA”), to the extent that it has not already done so within the past six months, and on at least an annual basis thereafter, for a term of six years from the date of the LOA, the Firm shall conduct training for all associated persons regarding the Digital Communication Channels that the Firm has approved for business communication, along with the Firm’s current policies regarding retention of business-related electronic communications. The Firm shall maintain a record of individual completion of said training and a copy of said training materials in a readily accessible place for ease of review by FINRA staff.
6. The Firm shall conduct the training described in item number 5 above for all new hires, within sixty-five days from the date of commencement of new hire training, for a term of six years from the date of the LOA. The Firm shall retain a record of

- all new hire training, including a copy of all written training materials, and keep said record(s) in a readily accessible place for ease of review by FINRA staff.
7. Within 90 days of the LOA, the Firm shall, to the extent that it has not already done so, establish and maintain a written list(s) of all Digital Communication Channels that its associated persons are permitted to use to communicate about Firm business. The list(s) shall be circulated to all of the Firm's associated persons at least on a semi-annual basis, for a term of six years from the date of the LOA. The Firm shall require that all associated persons obtain written approval for use of any Digital Communication Channels to communicate about Firm business that are not already on the approved list(s) maintained by the Firm. The Firm shall maintain a record of all requests and approvals or rejections of each request, including the date of the requests and the Firm's decision. The Firm shall maintain copies of such requests and decisions in a readily accessible place for ease of review by FINRA staff.
  8. The Firm shall require all associated persons to disclose on at least a semi-annual basis, for a term of six years from the date of the LOA, any unapproved Digital Communication Channels he/she is using to communicate about Firm business. The Firm shall retain records of such disclosures in a readily accessible place for ease of review by FINRA staff.
  9. Subject to Paragraph 7 above, the Firm shall prohibit associated persons from using Off-Channel Communications.
  10. Within 90 days of the LOA, the Firm shall, to the extent that it has not already done so, develop a process whereby, in the event that an associated person sends or receives an Off-Channel Communication, the Off-Channel Communication is submitted to the Firm and retained in compliance with relevant securities laws and regulations. For a term of six years from the date of the LOA, the Firm shall maintain a record of all such Off-Channel Communications, including a record of the Firm's receipt of the communication, in a readily accessible place for ease of review by FINRA staff.
  11. Within 90 days of the LOA, the Firm shall, to the extent that it has not already done so, develop and maintain written supervisory policies and procedures detailing the Firm's process for disciplining associated persons who utilize Off-Channel Communications to communicate about Firm business. When the Firm utilizes the disciplinary process, the Firm shall document each instance. The Firm shall retain records of such written supervisory policies and procedures and records of the disciplinary processes and each outcome.
  12. All requested documents and certifications under this Supervision Plan shall be sent directly to FINRA's Statutory Disqualification Group at [SDMailbox@FINRA.org](mailto:SDMailbox@FINRA.org).
  13. The Firm shall obtain written approval from FINRA's Statutory Disqualification Group prior to changing any provision of the Supervision Plan.

14. The Firm shall submit any proposed changes or other requested information under this Supervision Plan to FINRA's Statutory Disqualification Group at [SDMailbox@FINRA.org](mailto:SDMailbox@FINRA.org).

## VII. Discussion

After carefully reviewing the entire record in this matter, FINRA approves the Firm's request to continue its membership with FINRA, subject to the terms and conditions set forth herein. In evaluating UBS' Application, FINRA assessed whether the Firm has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to investors or the markets. *See* FINRA By-Laws, Art. III, Sec. 3(d); *cf. Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (holding that FINRA "may deny an application by a firm for association with a statutorily disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors"). Typically, factors that bear on FINRA's assessment include, among other things, the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, the Firm's regulatory history, and whether there has been any intervening misconduct.

As of the date of this Notice, FINRA has determined that the Firm's continued membership is consistent with the public interest and does not create an unreasonable risk of harm to investors or the markets. While the SEC Order identified serious violations of securities laws, the Firm was not expelled or suspended, nor were any limitations placed on UBS' securities activities. Although the SEC Order triggered certain disqualifications from exemptions from registration available under the Securities Act of 1933 ("Securities Act"), specifically Regulations A, D and E of the Securities Act and Regulation Crowdfunding, the SEC granted the Firm a waiver from the application of the disqualification provisions of Rules 262(a)(4)(ii), 506(d)(1)(iv)(B), and 602(c)(3) of the Securities Act and Rule 503(a)(4)(ii) of Regulation Crowdfunding. Moreover, the full amount of the civil monetary penalty was promptly paid and the Firm promptly paid the sums owed to the CFTC based on an order with similar findings as the disqualifying one. Additionally, the Firm represented that it is in compliance with the ordered undertakings.

Member Supervision also acknowledges that within the SEC Order the SEC considered the Firm's prompt remedial actions and cooperation with the Commission when determining to accept the Offer of Settlement. Specifically, the Commission acknowledged that UBS enhanced its policies and procedures and increased training concerning the use of approved communications methods including on personal devices.<sup>61</sup>

It is well settled that a firm's regulatory history bears upon the assessment of its ability to comply with securities law and regulations. *See In the Matter of the Continued Association of Craig Scott Taddonio with Meyers Associate, L.P.*, SD-2117, slip op. at 24-25 (FINRA NAC March 8, 2017). However, the corrective measures taken by firms to address deficiencies are weighed in determining whether to approve applications. *See In the Matter*

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<sup>61</sup> *See* Exhibit 2 at p. 6. *See also* Exhibit 1 at FINRA00051-53.

*of the Association of X with the Sponsoring Firm*, SD11007 (FINRA NAC 2011) (where a firm's corrective actions negated Member Regulation's assertion that the firm failed to appreciate or respect securities rules and regulations). FINRA has also previously approved applications for continued membership where the firms had extensive regulatory history, including disqualifying events. See *In the Matter of the Continued Membership of Deutsche Bank Securities, Inc.*, SD-2190, (FINRA Jan. 14, 2020) and *In the Matter of the Continued Membership of Citigroup Global Markets, Inc.*, SD-2082, (FINRA May 2, 2017) (approving continued membership where the firms had extensive regulatory history, including recent disqualifying events).

In its evaluation of the Firm's Application, FINRA acknowledges the Firm's recent regulatory and disciplinary history, including its additional statutory disqualifying events. Member Supervision also notes that, as of the date of this Notice, the Firm has paid all fines and complied with all undertakings ordered by regulators. None of these matters would prevent the continuance of the Firm as a FINRA member. With respect to the Firm's recent examination exceptions, the Firm took multiple steps to resolve deficiencies, including updating its technology, working with third party vendors to obtain additional guidance, developing new data review procedures, enhancing a variety of existing procedures and implementing new ones, requiring additional education for its staff, adjusting trades to provide restitution to customers, and implementing a conflict checklist for opening certain accounts.

FINRA is further reassured by the controls set in place by the Firm's Supervision Plan which bolster the undertakings outlined in the SEC Order and will continue to provide oversight of the Firm and compliance with its remaining undertakings. In accordance with the Plan, the Firm agreed to conduct annual training for all associated persons, including new hires, regarding the Firm's approved digital communication methods and record retention policies for electronic communications. Further, the Plan calls for the Firm to maintain a list of approved digital communication methods that associated persons are permitted to use for Firm business and to circulate that list to its associated persons semi-annually. The Plan requires the Firm's associated persons to obtain written approval to use digital communication channels not already approved. The Plan prohibits the use of off-channel communications and requires associated persons to semi-annually disclose any unapproved digital communication methods they are using for Firm business; they must also forward any off-channel communications that may have taken place to the Firm for retention purposes. These provisions will help to ensure that the Firm is aware of the communication methods being used by associated persons so that it can appropriately monitor, capture, and retain those communications. Additionally, the Plan mandates that the Firm develop policies and procedures for disciplining associated persons who use unapproved communication methods for Firm business and segregate all certifications, reports, and supporting documentation submitted to the SEC regarding compliance with the undertakings, for ease of review by FINRA staff to ensure ongoing compliance.

The Department is further reassured by the progress the Firm has made on the undertakings required by the SEC. Specifically, the Firm retained a compliance consultant, and that consultant has completed its comprehensive review of UBS' policies, procedures, and

training related to the use and preservation of electronic communications.<sup>62</sup> In addition, the compliance consultant submitted its detailed report of findings to SEC staff, and the Firm is in the process of adopting the recommendations set forth in the report.<sup>63</sup>

Following the approval of the Firm's continued membership in FINRA, FINRA intends to utilize its examination and surveillance processes to monitor the Firm's continued compliance with the standards prescribed by Exchange Act Rule 19h-1 and FINRA Rule 9523.

Thus, FINRA is satisfied, based on the foregoing and on the Firm's representations made pursuant to the Supervision Plan, that the Firm's continued membership in FINRA is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. Accordingly, FINRA approves UBS' Application to continue its membership with FINRA.

FINRA certifies that the Firm meets all qualification requirements and represents that the Firm is registered with several other SROs including BOX; Cboe; NYSE; NYSE American; NYSE Arca; NYSE Chicago; ISE; Nasdaq; PHLX; DTC; NSCC; and FICC-GOV. The SROs have been provided with the terms and conditions of UBS' proposed continued membership, and they concur with FINRA.

In conformity with the provisions of Rule 19h-1 of the Exchange Act, the continued membership of the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the SEC.

On Behalf of FINRA,



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Marcia E. Asquith  
Executive Vice President & Corporate Secretary

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<sup>62</sup> See Exhibit 18 at p. 1.

<sup>63</sup> See Exhibit 19.

EXHIBITS

SD-2341

1. MC-400A Application and related attachments compiled by CRED, with a cover memorandum dated October 27, 2022.
2. SEC Order, *In re UBS Financial Services, Inc. and UBS Securities LLC*, Exchange Act Release No. 95929 (Sept. 27, 2022).
3. *In re Certain Broker-Dealer Practices*, Securities Act Release No. 11109 (Sept. 27, 2022).
4. CRD Excerpt: Organization Registration Status.
5. CRD Excerpts: Types of Business and Other Business Descriptions.
6. Disposition Letter for Examination No. 20210693295 dated September 13, 2022, Examination Report dated May 31, 2022, and Firm Response dated July 13, 2022.
7. Disposition Letter for Examination No. 20210693296 dated September 13, 2022, Examination Report dated May 31, 2022, and Firm Response dated July 13, 2022.
8. Disposition Letter for Examination No. 20220738525 and Examination Report dated April 19, 2023.
9. Disposition Letter for Examination No. 20210731446 dated January 17, 2023 and Firm Response dated January 26, 2023.
10. Disposition Letter for Examination No. 20200686448 dated November 15, 2022 and Firm Response dated December 22, 2022.
11. Disposition Letter for Examination No. 20170552238 dated October 3, 2022.
12. Disposition Letter for Examination No. 20200665013 dated October 4, 2021 and Firm Response dated October 28, 2021.
13. SEC Examination Letter for File No. 8-16267 dated September 28, 2023.
14. SEC Examination Letter for File No. 8-16267 dated August 31, 2022 and Firm Response dated October 7, 2022.
15. FINRA AWC No. 2018060139001, dated April 25, 2022, CRD Disclosure for Occurrence 2200182, and Certification of Compliance with Undertakings dated August 26, 2022.

16. FINRA AWC No. 2019062532801, dated December 20, 2021.
17. CFTC Order, *In re UBS AG, UBS Financial Services, Inc., and UBS Securities LLC*, CFTC Docket No. 22-42 (Sept. 27, 2022).
18. Correspondence from Lari A. Dierks to FINRA dated December 16, 2022.
19. Correspondence from Lari A. Dierks to FINRA dated June 21, 2023.
20. Cboe Disciplinary Decision and Letter of Consent, *In re UBS Financial Services, Inc.*, File No. USE-2218-01 (Nov. 8, 2021).
21. BOX Letter of Consent No. 2018059264301, dated September 30, 2021.
22. *In re UBS Financial Services Inc.*, Exchange Act Release No. 95368 (July 27, 2022).
23. *In re UBS Financial Services Inc.*, Exchange Act Release No. 95168 (June 29, 2022).
24. *In re UBS Financial Services Inc.*, Advisors Act Release No. 5781 (July 19, 2021).
25. *In re UBS Financial Services Inc.*, Exchange Act Release No. 89348 (July 20, 2020).
26. *In re UBS Financial Services Inc.*, Exchange Act Release No. 84828 (Dec. 17, 2018), and correspondence from the Firm to FINRA regarding compliance with the sanctions, dated February 6, 2019.
27. *In re the Continued Membership of UBS Financial Services, Inc. and UBS Securities, LLC*, SD-1757, SD-1758, and SD-1896 (FINRA May 7, 2014), and the SEC's Letter of Acknowledgement dated August 21, 2014.
28. *In re the Continued Membership of UBS Financial Services, Inc. et al.*, SD-MCDC-036, SD-MCDC-037, SD-MCDC-043, SD-MCDC-050, SD-MCDC-051 (FINRA Nov. 30, 2015), and the SEC's Letter of Acknowledgement dated January 6, 2016.
29. Executed Consent to Plan of Heightened Supervision dated September 14, 2023.