

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Memberships
of
UBS Financial Services, Inc., and
UBS Securities, LLC,
with
FINRA

Notice Pursuant to
Rule 19h-1
Securities Exchange Act
of 1934

SD-1757, SD-1758, and SD-1896

May 7, 2014

I. Introduction

On February 9, 2009, and June 2, 2011, UBS Financial Services, Inc. (“UBS Financial Services”) submitted Membership Continuance Applications (collectively, the “UBS Financial Services Applications”) with FINRA’s Department of Registration and Disclosure.¹ On February 9, 2009, UBS Securities, LLC (“UBS Securities”) also submitted a Membership Continuance Application (the “UBS Securities Application”) with FINRA’s Department of Registration and Disclosure.² The UBS Financial Services Applications and the UBS Securities Application (collectively, the “UBS Applications”) seek to permit UBS Financial Services and UBS Securities, FINRA members subject to statutory disqualifications, to continue their membership with FINRA. Hearings were not held in these matters. Rather, pursuant to FINRA Rule 9523, FINRA’s Department of Member Regulation (“Member Regulation”) recommended that the Chair of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, approve UBS Financial Services’ and UBS Securities’ continued memberships with FINRA pursuant to the terms and conditions set forth below.

¹ SD-1758 corresponds to the MC-400 filed by UBS Financial Services on February 9, 2009. SD-1896 corresponds to the MC-400 filed by UBS Financial Services on June 2, 2011.

² SD-1757 corresponds to the MC-400 filed by UBS Securities on February 9, 2009. UBS Financial Services and UBS Securities are both registered with the SEC as broker-dealers and wholly-owned subsidiaries of UBS AG. UBS Securities’ disqualifying event is identical to one of UBS Financial Services’ disqualifying events. Because of the common disqualifying event and relationship between the entities, a single notice is being filed pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 (“Exchange Act”).

For the reasons explained below, we approve the UBS Applications.

II. The Statutorily Disqualifying Events

A. UBS Financial Services and UBS Securities

UBS Financial Services and UBS Securities are statutorily disqualified as the result of a judgment entered against them in the United States District Court for the Southern District of New York dated December 22, 2008 (the “2008 Judgment”).³ The 2008 Judgment, among other things, permanently enjoined UBS Financial Services and UBS Securities from violating Exchange Act Section 15(c) and was based on a complaint issued by the SEC alleging that UBS Financial Services and UBS Securities, in 2007 and 2008, misled customers regarding the nature and risks of auction rate securities (“ARS”) that the firms underwrote, marketed, and sold.⁴ The complaint further alleged that the firms misrepresented to their customers that ARS were safe, highly liquid investments and comparable to money market funds. The complaint also alleged that, after the ARS market began to deteriorate, the firms increased their support of ARS by committing their own capital to help prevent those auctions from failing and, although they knew that the risk of failed auctions had materially increased, they did not timely and accurately disclose this information to their customers. Finally, the complaint alleged that when the firms stopped supporting ARS auctions and the markets subsequently failed, many customers were left with illiquid ARS.

The 2008 Judgment required UBS Financial Services and UBS Securities to comply with certain undertakings, including to: (1) make offers to purchase, at par (plus accrued and unpaid dividends and interest), certain ARS from customers; and (2) pay customers who sold their ARS below par the difference between par and the price at which the customer sold the ARS, plus reasonable interest. The firms repurchased at par \$22.1 billion of ARS from certain eligible clients. In September 2010, the SEC determined that the firms had complied with the terms of the 2008 Judgment and that the SEC would not seek additional penalties against the firms. In addition to the SEC action, the firms executed settlement agreements with approximately 50 state regulatory authorities and paid each of them their allocation of the \$75 million civil penalty that was set aside for that purpose.

³ The SEC’s complaint underlying the 2008 Judgment describes UBS Securities as an investment bank subsidiary of UBS AG that “provides securities underwriting and related services.” The 2008 Judgment states that UBS Financial Services “provides wealth management and related services.”

⁴ Sections 3(a)(39) and 15(b)(4)(C) of the Exchange Act provide that a member firm is subject to statutory disqualification if it is enjoined from, among other things, engaging in any conduct or practice as a broker-dealer or in connection with the purchase or sale of any security.

B. UBS Financial Services' Additional Disqualifying Event

UBS Financial Services is also statutorily disqualified as a result of a judgment entered against it in the United States District Court for the District of New Jersey on May 6, 2011 (the "2011 Judgment"). The 2011 Judgment, among other things, permanently enjoined UBS Financial Services from violating Exchange Act Section 15(c) and was based on a complaint issued by the SEC alleging that the firm engaged in fraudulent bidding practices involving the temporary investment of proceeds from the sale of tax-exempt municipal securities in certain reinvestment products by state and local governmental entities. The complaint further alleged that the firm rigged at least 100 transactions, generating millions of dollars in ill-gotten gains. The complaint stated that as a result of UBS Financial Services' fraudulent conduct, the firm won bids for at least 22 municipal reinvestment instruments, rigged at least 12 transactions, submitted at least 64 courtesy or purposefully non-winning bids, and in at least seven instances, facilitated improper, undisclosed payments to bidding agents.

The 2011 Judgment ordered UBS Financial Services to pay a penalty of \$32.5 million and disgorge \$9,606,543 (with prejudgment interest of \$5,100,637). The firm submitted a certification of compliance with the SEC on October 7, 2011. UBS Financial Services paid the penalty and disgorgement amounts under the 2011 Judgment.

III. **Background Information**

A. UBS Financial Services

UBS Financial Services has been a FINRA member since 1936. It has approximately 541 branch offices, 307 of which are offices of supervisory jurisdiction ("OSJs"). UBS Financial Services employs approximately 12,617 registered individuals and approximately 13,101 non-registered individuals.

1. Recent Routine Examinations

On June 24, 2013, as a result of the firm's 2012 examination, FINRA issued it a Cautionary Action, which cited the firm for the following violations: (1) failing to determine whether its mutual fund short side positions reconciled with the aggregate record of each mutual fund; (2) maintaining inadequate manual processes for capturing certain customer margin debits; (3) failing to establish mark-to-market exposure limits for certain TBA trades; (4) failing to maintain a process for recalling stock loans and improperly netting borrowed shares against a stock loan; and (5) inaccurately filing customer complaints. The firm stated that it had corrected or was in the process of addressing the deficiencies cited in the Cautionary Action.

On May 25, 2012, as a result of the firm's 2011 examination, FINRA issued it a Cautionary Action, which cited the firm for the following violations: (1) inaccurately calculating reserve formulas; (2) maintaining a custody agreement that inappropriately allowed liens on customer securities; (3) inaccurately filing for registered representatives

Uniform Applications for Securities Industry Registration or Transfer (“Forms U4”); (4) failing to file and timely acknowledge customer complaints; and (5) failing to adequately supervise written correspondence. The firm stated that it had corrected or was in the process of addressing the deficiencies cited in the Cautionary Action.

2. Recent Regulatory Actions

During the past two years, UBS Financial Services has been the subject of a number of regulatory actions.⁵

In December 2013, UBS Financial Services entered into a Letter of Acceptance, Waiver and Consent (“AWC”) with NASDAQ OMX BX for violations of trading rules of the Boston Options Exchange. Without admitting or denying the allegations, the firm consented to findings that it: (1) had a programming error in its proprietary system that caused the firm to fail to report certain positions and other information to the Options Clearing Corporation; and (2) failed to maintain an adequate supervisory system designed to achieve compliance with rules relating to these matters. The firm was censured and fined \$540,000.

In November 2013, UBS Financial Services entered into an AWC with FINRA for violations of MSRB Rules G-17 and G-30, FINRA Rule 6730, and NASD Rules 2010 2320. Without admitting or denying the allegations, the firm consented to findings that it: (1) purchased from customers municipal securities for its own account, and sold to customers municipal securities from its own account, at aggregate prices that were not fair and reasonable; (2) failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy and sell in such market so that the resultant price to its customers was as favorable as possible; and (3) failed to timely report eligible transactions to FINRA’s Trade Reporting and Compliance Engine. FINRA censured the firm and fined it \$260,000.

In September 2013, the Texas State Securities Board reprimanded the firm for violations of certain rules and regulations of the Texas Securities Act. Without admitting or denying the allegations set forth in the complaint, the firm consented to findings that it: (1) failed to establish and maintain a supervisory system reasonably designed to monitor the registration status of its client service associates; (2) maintained order tickets that did not properly identify individuals who accepted client orders; and (3) accepted orders, purchases, and sales of securities from clients residing in Texas through client service associates not registered in Texas. As a result, the firm was reprimanded and fined \$364,707.⁶

⁵ For the UBS Applications, we agree with Member Regulation’s focus on each firm’s regulatory actions that occurred within the past two years and resulted in fines of \$100,000 or more. We discuss these matters herein.

⁶ In 2013 and 2014, the firm also settled additional complaints filed by numerous states that alleged similar misconduct.

In June 2012, UBS Financial Services entered into an AWC with FINRA for violations of Rule 204T(a) of Regulation SHO and of NASD Rules 6130(d)(6) and 6955(a). Without admitting or denying the allegations, the firm consented to findings that it: (1) failed to deliver positions at a registered clearing agency in equity securities and to immediately thereafter close out the fail to deliver positions; (2) transmitted reports to the Order Audit Trail System that contained inaccurate buy/sell order designations; and (3) failed to report to the over-the-counter reporting facility the correct symbol indicating whether a transaction was a buy, sell, sell short, or cross for transactions in reportable securities. FINRA censured the firm and fined it \$167,500.

In May 2012, the firm entered into an AWC with FINRA for violations of NASD Rules 2310 and 2110 and FINRA Rule 2010. Without admitting or denying the allegations, the firm consented to findings that, in 2008 and 2009, it: (1) failed to establish and maintain a supervisory system reasonably designed to achieve compliance in connection with the sale of non-traditional exchange traded funds (“Non-Traditional ETFs”); (2) allowed its registered representatives to recommend Non-Traditional ETFs to customers without performing reasonable diligence to understand the risks and features associated with them; and (3) made unsuitable recommendations of Non-Traditional ETFs to certain customers with primarily conservative risk tolerance profiles. As a result, FINRA censured the firm, fined it \$1.5 million, and ordered it to pay restitution of \$431,488.

In February 2012, the firm consented to an order by the Pennsylvania Securities Commission finding that the firm failed to reasonably supervise three agents selling certain structured products to investors. Without admitting or denying the allegations, the firm agreed to pay an administrative assessment of \$200,000 and legal and investigation costs of \$75,000.

B. UBS Securities

UBS Securities has been a FINRA member since 1978. It has approximately 14 branch offices, 11 of which are OSJs. UBS Securities employs approximately 1,899 registered individuals and approximately 4,616 non-registered individuals.

1. Recent Routine Examinations

On October 2, 2013, as a result of UBS Securities’ 2013 cycle examination, FINRA issued the firm a Cautionary Action, which cited it for the following violations: (1) failing to keep complete and accurate books and records of its depository breaks; and (2) failing to establish and maintain an adequate supervisory system by way of audits, risk assessment reviews, or trading desk reviews for its Equity Investor Platform. The firm stated that it had corrected or was in the process of addressing the deficiencies cited in the Cautionary Action.

On March 18, 2013, as a result of UBS Securities’ 2012 cycle examination, FINRA issued the firm a Cautionary Action, which cited it for the following violations:

(1) incorrectly treating a non-customer affiliate account as a customer account resulting in incorrectly applying a segregation requirement to the shares in the account; (2) failing to take a capital charge for a repurchase deficit with an affiliated counterparty; (3) failing to have processes to distinguish exempt borrowers from non-exempt borrowers; (4) failing to timely report to FINRA certain state settlements related to ARS; and (5) failing to have an adequate system in place for ensuring compliance with gift and entertainment policies and procedures. The firm stated that it had corrected or was in the process of addressing the deficiencies cited in the Cautionary Action.

On November 30, 2011, as a result of UBS Securities' 2011 cycle examination, FINRA issued the firm a Formal Action, which cited it for inadequate supervision of customer reserve accounts. FINRA also issued the firm a Cautionary Action, which cited it for the following violations: (1) failing to maintain processes that govern borrowing securities from unapproved lenders; (2) failing to maintain adequate written supervisory procedures (WSPs) for client on-boarding and new account approval; (3) failing to timely update registered representatives' approved outside business activities in Forms U4; (4) failing to enforce WSPs relating to the timely filing of disclosures; (5) failing to establish procedures to address specific items relative to the firm's Direct Participation Program business; and (6) failing to timely file the annual attestation relating to research analyst compensation. The firm stated that it had corrected or was in the process of addressing the deficiencies cited in the Cautionary Action.

2. Recent Regulatory Actions

In December 2013, UBS Securities entered into an AWC with FINRA for violations of FINRA Rules 6760 and 7450. Without admitting or denying the allegations, the firm consented to findings that it failed to repair Reportable Order Events that were transmitted to, and rejected by, the Order Audit Trail System ("OATS") for context or syntax errors and that were repairable. Further, the firm, as managing underwriter, failed to report new issue offerings in corporate bonds within the required timeframe and failed to notify FINRA of new issue offerings in securitized products involving collateralized debt obligations ("CDO") and asset-backed securities. As a result, FINRA censured the firm and fined it \$100,000.

In October 2013, UBS Securities entered into an AWC with FINRA for violations of Exchange Act Rules 15c3-3(e) and 15c3-3(g), FINRA Rule 2010, and NASD Rule 3010(a). Without admitting or denying the allegations, the firm consented to findings that it had an approximately \$400 million hindsight deficiency in its reserve bank accounts as a result of cash being substituted for unqualified securities. The firm's supervisory system was also inadequate to ensure that intraday debit and credit movements in the reserve bank accounts were detected and elevated. As a result, FINRA censured the firm and fined it \$100,000.

In September 2013, UBS Securities entered into an AWC with FINRA for violations of Exchange Act Rules 10b-10(a), 15a-6, 17a-3(a), and 17a-4, FINRA Rules 2010 and 2232, and NASD Rules 2110, 2230, 3010, and 3110(a). Without admitting or

denying the allegations, the firm consented to findings that it failed to deliver certain electronic trade confirmations and account statements, and in certain instances, failed to disclose required transaction information to institutional customers who executed trades in non-US securities through the firm's non-registered foreign affiliates. The firm's failure to send required trade confirmations and account statements stemmed from missing or incorrect data or program indicators in its main systems and inadequate procedures to supervise and monitor the systems related to the delivery of such confirmations and statements. As a result, FINRA censured the firm and fined it \$575,000.⁷

In August 2013, UBS Securities consented to a cease and desist order by the Commission for violating Sections 17(a)(2) and (a)(3) of the Securities Act of 1933 (the "Securities Act") and Section 206(2) of the Investment Advisers Act of 1940. The violations resulted from the firm's structuring and marketing of a largely synthetic CDO. Specifically, the firm failed to disclose in its offering documents that it retained \$23.6 million in upfront payments received from bidders in connection with credit default swaps referencing residential mortgage-backed securities that served as collateral for the CDO. Further, the firm negligently caused the collateral manager to fail to meet his fiduciary obligations as an investment adviser to the CDO. As a result, the Commission censured the firm, ordered it to disgorge \$34,408,185 (and pay prejudgment interest of \$9,719,002), and imposed a civil penalty of \$5,655,000.

In November 2012, UBS Securities entered into an AWC with FINRA for violations of FINRA Rule 2010 and NASD Rules 2110, 3010, and 3070(f). Without admitting or denying the allegations, the firm consented to findings that it failed to submit to FINRA copies of civil litigation filings in which it was named as a defendant. Additionally, the firm failed to establish and maintain a supervisory system and failed to establish, maintain, and enforce WSPs that were reasonably designed to achieve compliance with these reporting obligations. As a result, FINRA censured the firm and fined it \$100,000.⁸

IV. The Firms' Proposed Continued Memberships with FINRA and Proposed Supervisory Plans

UBS Financial Services and UBS Securities seek to continue their membership with FINRA notwithstanding the 2008 Judgment and 2011 Judgment that triggered their statutory disqualifications. The firms included supervisory plans with the UBS Applications to address deficiencies relating to the underlying causes of the statutory disqualifications.

⁷ UBS Securities discovered the above-described violations and self-reported the matter to FINRA.

⁸ UBS Securities discovered the above-described violations and self-reported the matter to FINRA.

A. UBS Financial Services' Plan—2008 Judgment

In connection with the 2008 Judgment, UBS Financial Services submitted a plan which set forth the following general categories where the firm represented that it has undertaken significant efforts to enhance compliance and supervision: (1) controls to prevent large impact product risks; (2) monitoring, detection and prevention of large scale product risks; and (3) risk-based enhanced product training.⁹

With respect to controls to prevent large impact product risks, the firm represents that it has augmented its controls and processes relating to new products and product risk disclosures. Specifically, the firm's new products and material changes to existing products are reviewed by a number of committees with regard to product design, development, classification, risk characteristics, marketing, and disclosure documentation. Furthermore, each new product is subject to mandatory core controls that scrutinize the risk characteristics of each new product and assess the type of investor to which the product should be marketed and sold.

With respect to monitoring, detection and prevention of large scale product risks, the firm has represented that it has enhanced its surveillance and monitoring tools by: (1) creating a surveillance tool, which is designed to identify trends in products in which large segments of clients are investing on an ongoing basis, as well as the clients' overall changes in principal invested amounts, net invested amounts and/or assets under management; and (2) launching an electronic real time reporting tool designed to detect and mitigate significant risks posed by products that have certain high risk characteristics. In addition, the firm has represented that it has taken a holistic risk approach by product type by: (a) performing analysis and stress tests of the market in which the products are typically traded and of the product type's characteristics; (b) forming a cross-departmental team to monitor risk and to make decisions regarding appropriate actions to be taken in response to it; and (c) implementing a communication plan to ensure that financial advisors receive real-time information with regard to risk so they can inform their clients and assist them in mitigating the risk.

Finally, with respect to risk-based enhanced products training, the firm has represented that it has established a committee comprised of lead managers from relevant divisions of the firm to formalize and augment management of product training. The committee is specifically responsible for ensuring that registered persons are aware of critical issues regarding product features, suitability, risk, compliance, and pricing and are able to have conversations with clients with respect to changing product risks and market turbulence. Training is mandatory for financial advisors for whom it is deemed appropriate, and they cannot sell a product until they complete requisite training.

⁹ UBS Financial Services represents that it is "not marketing or attempting to sell ARS to retail clients and has, with the exception of certain high fixed rate municipal ARS that have generally continued to clear at auction, blocked the entry of buy orders in its order entry system."

B. UBS Securities' Plan—2008 Judgment

In connection with the 2008 Judgment, UBS Securities submitted its own supervisory plan. The plan discusses a number of measures that the firm represents it has undertaken in connection with the events underlying the statutory disqualification, and sets forth the following general categories in which the firm represents it has undertaken significant efforts to enhance its compliance and supervision: (1) closure of the municipal securities group and the current ARS portfolio; (2) communications and marketing materials; (3) suitability; and (4) training for registered representatives.

As of May 2008, UBS Securities closed its Municipal Securities Group and no longer engages in any municipal underwriting, including the underwriting of ARS, although it maintains its own auction rate portfolio. The firm's efforts to manage its auction rate portfolio are limited to working with issuers in executing redemptions and tender offers and maintaining a dialogue with various dealers to identify any outright sale opportunities.¹⁰

With respect to communications and marketing materials, the firm has adopted a Communications Framework Policy that articulates key principles to which all of the firm's Equity and Fixed Income, Currency, and Commodities employees must adhere in written and verbal internal and external communications, including communications to clients. The Communication Framework Policy references numerous policies and procedures applicable to specific business areas within the firm, including the Transaction and Product Marketing Materials Policy ("Marketing Materials Policy"), which prescribes a framework for preparing, reviewing and approving all marketing materials created by the firm, and which creates supervisory responsibilities and accountability for the preparation, review and use of marketing materials by the sponsoring business desks. Each sponsoring business desk (i.e., the business unit or desk seeking to market a transaction product or service) is responsible for ensuring that all marketing materials include: (1) a complete and accurate summary of all of the material terms of the transactions, products or services described; (2) complete and accurate identification of risks and risk factors; and (3) accurate data and information. The sponsoring business desk is also responsible for monitoring external changes to products and working with the Compliance Department to conduct training.

¹⁰ While the firm represents that it engages in some outright sales of its remaining auction rate portfolio to other broker-dealers and other highly sophisticated institutional investors (such as hedge funds), on an individually negotiated basis, the firm requires that each investor sign documentation containing acknowledgements that, among other things: (1) it is a "qualified institutional buyer" as that term is defined in Rule 144A of the Securities Act of 1933"; (2) that it has "sufficient knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of ownership" of the securities; and (3) that it has "carefully evaluated" these merits and risks of ownership.

With respect to suitability, the firm's Suitability Policy is continuously updated to assure that the risk relating to the suitability or appropriateness of cash and derivative products is addressed, and to formalize the roles and responsibilities of the firm's management, business units and control functions in minimizing these risks. All cash and derivative products are reviewed to assess product suitability and customer-specific suitability and appropriateness. The Suitability Policy requires business areas to establish standards governing product description and risk, and all of the firm's employees are required to affirm annually that they have read and understand the Suitability Policy and must complete suitability training.¹¹

The firm also has Suitability and Appropriateness Review Committees (SARCs) whose primary function is to provide a forum for the review and approval of proposals for any new sensitive products or transactions and new business initiatives. The SARCs also review the performance of certain existing products or transactions (which are escalated to the SARCs where the client or the firm may be exposed to significant loss or other reputational issues). The SARCs also review, on a quarterly basis, any transactions that generated revenue in excess of a monetary amount determined by the relevant SARCs to ensure that the transactions were, and remain, appropriate. Finally, SARCs review and approve third-party distributors, taking into account such factors as regulatory status, market standing and reputation, known capital base, the nature of the client base (institutional, high net worth, retail) and perceived level of sophistication. The SARCs reaffirm approval of all third-party distributors at least on an annual basis.

With respect to training for registered representatives, the firm conducts training on the marketing materials and suitability policies across Fixed Income and Equities in "Day 2" Training (for new joiners) and the annual compliance training (in the case of current employees). The Day 2 training and the annual compliance training cover client risk topics such as marketing materials, suitability, conflicts of interest and the know-your-customer process. All registered representatives are required to participate in this training. In addition, registered representatives are required to maintain the appropriate securities licenses relevant to trade particular products.

With respect to new business initiatives, the firm has established a detailed framework within which any proposals for "new business initiatives" (i.e., covering the introduction of new products, new markets, new locations, client segments or setting up new distribution) and "complex trades" (i.e., transactions which are unusual in size, term

¹¹ Additionally, in May 2013, the firm published Group Suitability Principles that address the division of responsibilities between the product-providing and product-distributing businesses. Each business division is required to review all new products and services in their relevant processes, and within those processes, each business division is responsible for taking reasonable steps to ensure that these general principles are considered and applied. The distributing business division is responsible for ensuring the consistency of offering and marketing materials and for determining whether and to what extent additional internal or external marketing materials or educational materials are permitted or required for its customers.

or structure for the firm or for clients, and which may carry new or elevated risks) are to be reviewed and approved and, if implemented, monitored and controlled. Any new business or complex transaction must first be signed off in accordance with the Suitability Policy before they are subject to the New Business Initiative (“NBI”) and Complex Trade Approval (or “CTA”) processes. These processes have been designed to ensure that all material aspects of risk and governance are considered before the firm enters into any new business or transaction. Further, post-implementation reviews must be conducted for all implemented and executed NBI and CTA proposals. The objectives of these reviews are to assess the sustainability of the infrastructure and to assess the implementation of internal controls to mitigate exposure within the firm’s risk appetite. These reviews are conducted until a business has been fully established and become part of the standard offering or until a transaction has matured and settled.

C. UBS Financial Services’ Plan—2011 Judgment

Finally, in connection with the 2011 Judgment, UBS Financial Services submitted an additional supervisory plan. In addition to exiting the business of providing reinvestment products to municipalities, the firm proposed a supervisory plan that sets forth certain control measures that the Firm represents it has undertaken to address deficiencies relating to the underlying cause of the statutory disqualification, as described below.

The firm implemented a revised Code of Business Conduct and Ethics, which provides that: (1) employees must deal honestly and in good faith with all clients, business partners and competitors; (2) the firm is committed to compliance with anti-trust and competition laws and regulations; and (3) the firm does not engage in unethical or unfair competitive practices and uses only legal and ethical methods when collecting competitive information. The firm represented that it updates and reviews this policy every three years, at a minimum.

UBS Financial Services also represents that it implemented a Global Competition Law Policy specifically addressing anti-competitive behavior, which includes, among other things: (1) fixing, maintaining or stabilizing fees, rates, charges or other prices charged to the firm’s clients or sought from the firm’s competitors; (2) coordinating bidding activities or quotations; and (3) exchanging any sensitive competitive information, such as fees, rates, prices, costs, margins, discounts, and information relating to bids or quotations, with competitors.

Further, the firm represented that it: (1) requires employees to undergo specific training concerning anti-competitive conduct; and (2) has implemented enhanced controls within business lines that present a risk of collusive or anti-competitive conduct, including implementing a “Bid Comp” system (which retains all bids, including losing bids, for supervisory review), requiring payments made to the business line to be reviewed and approved by the firm’s legal department, and amending procedures to

prohibit anti-competitive or collusive conduct and to require supervisors to review the previous month's bids for indications of anti-competitive behavior.¹²

V. Discussion

Member Regulation recommends approval of the firms' requests to continue their memberships in FINRA. After carefully reviewing the entire record in this matter, we approve the UBS Applications.

In evaluating applications like these, we assess whether the statutorily disqualified firm seeking to continue its membership with FINRA has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. *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"). Factors that bear on our assessment include the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, and whether there has been any intervening misconduct.

We recognize that the 2008 Judgment and the 2011 Judgment involved serious violations of securities rules and regulations. The record shows, however, that the firms have fully complied with all of the terms of the judgments. The firms have paid all amounts due under the judgments, and they have submitted to the SEC all required certifications to their compliance in all material respects with the undertakings required by the 2008 Judgment. The firms also represent that they have undertaken significant efforts to enhance compliance and supervision, including with respect to governance, controls, training and communications, marketing materials, policies and procedures, and suitability of products. The firms' plans set forth extensive provisions regarding these matters. Further, as described above, the firms represent that their ARS business activities have decreased, UBS Financial Services represents that it has exited the business of providing reinvestment products to municipalities, and UBS Financial Services represents that the employees responsible for the misconduct underlying the 2011 Judgment are no longer at the firm.¹³

¹² Subsequent to any approval of UBS Financial Services' and UBS Securities' continued membership in FINRA notwithstanding their statutory disqualifications, FINRA staff's first examination of the firms will evaluate whether they have complied with their proposed plans of supervision. After the firms' initial examinations, FINRA will determine whether to subject the plans to further review, considering (among other things) FINRA's overall risk-based assessment of the firms.

¹³ We have also considered that the SEC, in connection with the 2008 Judgment and 2011 Judgment, has granted the firms certain waivers, exemptions, and "no-action" relief under the Exchange Act, the Securities Act, the Investment Advisers Act of 1940, and the rules and regulations promulgated thereunder.

We further find that although the firms have disciplinary histories, the record shows that they have taken corrective actions to address noted deficiencies. We agree with Member Regulation that the firms' disciplinary histories should not prevent them from continuing as FINRA members, and we conclude that, notwithstanding each firm's regulatory history, the continued membership of the firms are in the public interest and do not present unreasonable risks of harm to the market or investors.

At this time, we are satisfied, based in part upon the firms' representations concerning their compliance with their respective plans, Member Regulation's representations concerning FINRA's future monitoring of the firms, and the record currently before us, that the firms' continued memberships in FINRA are consistent with the public interest and do not create an unreasonable risk of harm to the market or investors. Accordingly, we approve the UBS Applications for UBS Financial Services and UBS Securities to continue their memberships in FINRA.

FINRA certifies that UBS Financial Services and UBS Securities meet all qualification requirements and represents that they are registered with NSX, MSRB, and NYSE ARCA, as well as AMEX, CBOE, CHX, ISE, NYSE, NQX, NASDAQ OMX PHLX, NASDAQ OMX BX, DTC, NSCC, and FICC, which concur with the firms' proposed continued memberships.

On Behalf of the National Adjudicatory Counsel,

Marcia E. Asquith
Senior Vice President and Corporate Secretary