

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2016048685301**

TO: Department of Enforcement  
Financial Industry Regulatory Authority (“FINRA”)

RE: RBS Securities, Inc., Respondent  
CRD No. 11707

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, RBS Securities, Inc. (“RBS,” the “Firm” or “Respondent”), 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, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Respondent 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 FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

**BACKGROUND**

RBS has been a member of FINRA since December 1983. The Firm, headquartered in Stamford, CT, engages in a general securities business. It employs approximately 224 registered representatives and maintains 3 branch offices.

**RELEVANT DISCIPLINARY HISTORY**

The Firm has no relevant disciplinary history.

**OVERVIEW**

From August 2008 to the present (the “Relevant Period”), the Firm failed to maintain an estimated 14 million electronic brokerage records in non-erasable and non-rewritable format, known as WORM format, as required by Section 17(a) of the Exchange Act of 1934 (the “Exchange Act”), Rule 17a-4(f) thereunder, NASD Rule 3110 and FINRA Rule 4511. WORM stands for “write once, read many,” and is intended to prevent the alteration or destruction of broker-dealer records stored electronically. Additionally, from May to September 2015, the Firm failed to retain 5,849 Microsoft chat messages, in violation of Exchange Act Rule 17a-4(b)

and FINRA Rule 4511. The Firm also failed to implement an audit system for the inputting of records in electronic storage media, in violation of Exchange Act Rule 17a-4(f)(3), NASD Rule 3110 and FINRA Rule 4511. Finally, the Firm's written supervisory procedures failed to describe an adequate supervisory process relating to the Firm's WORM compliance, in violation of NASD Rule 3010 and FINRA Rule 3110.

## **FACTS AND VIOLATIVE CONDUCT**

Over the past decade, the volume of sensitive financial data stored electronically by broker-dealers has risen exponentially. These broker-dealer electronic records must be complete and accurate, not only to assist FINRA and other regulators in their efforts to protect investors through periodic examinations, but also to ensure member firms can carry out their audit functions. Recent years also have seen increasingly aggressive attempts to hack into electronic data repositories, enhancing the need for firms to keep these records in WORM format.

Section 17(a) of the Exchange Act and Rule 17a-3 thereunder require broker-dealers to make certain records relating to its business, including trade blotters, asset and liability ledgers, order tickets, trade confirmations and other records. Rule 17a-4 specifies the manner and length of time that those records must be maintained.

NASD Rule 3110(a) provides, in part, that each member "shall make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, and statements of policy promulgated thereunder and...[t]he record keeping format, medium and retention period shall comply with" Rule 17a-4."<sup>1</sup>

FINRA Rule 4511 provides, in part, that each member "shall make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules" ... and all "books and records required to be made pursuant to the FINRA rules shall be preserved in a format and media that complies with" Rule 17a-4.

These requirements are an essential part of the investor protection function because preservation of these records is the "primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards."<sup>2</sup>

### *1. The Firm Failed to Retain Electronic Records in WORM Format*

When broker-dealers use electronic storage media to retain records, Rule 17a-4(f)(2)(ii) requires the firms to "[p]reserve the records exclusively in a non-rewritable, non-erasable" or WORM format. From August 2008 to the present, the Firm failed to maintain in WORM format an estimated 14 million brokerage records pivotal to the Firm's business. This deficiency spanned 26 categories of records including customer and general ledgers, stock records, options records, purchase and sale blotters, trade confirmations, cash reconciliations, customer new account

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<sup>1</sup> NASD Rule 3110 was replaced by FINRA Rule 4511, effective December 5, 2011.

<sup>2</sup> Commission Guidance to Broker Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f), SEC Interpretation Release No. 34-44238, 17 C.F.R. Part 241, at p. 3 of 15 (May 1, 2001).

records, various written agreements, records concerning the approval of advertising and sales literature, bills receivable and payable and records relating to customer complaints. For example, for the year 2015 alone, the Firm estimates it failed to maintain in WORM format approximately 1.75 million transaction-related records and approximately 59,183 customer account statements.

Based on the foregoing, RBS violated Exchange Act Rule 17a-4(f)(2)(ii), NASD Rules 3110 and 2110, and FINRA Rules 4511 and 2010.<sup>3</sup>

## *2. The Firm Failed to Retain Electronic Communications*

Exchange Act Rule 17a-4(b)(4) requires a broker-dealer to “preserve for a period of not less than three years, the first two years in an easily accessible place ... [o]riginals of all communications received and copies of all communications sent ... by [the broker-dealer] (including inter-office memoranda and communications) relating to its business as such ...” In May 2015, due to a configuration error relating to a Microsoft server, the Firm failed to export and log a sub-set of Microsoft chat messages into the Firm’s retention system. From May to September 2015, the Firm failed to retain approximately 5,849 of Microsoft chat messages.

Based on the foregoing, RBS violated Exchange Act Rule 17a-4(b)(4) and FINRA Rules 4511 and 2010.

## *3. The Firm Failed to Implement an Audit System Regarding the Inputting of Records in Electronic Storage Media*

Exchange Act Rule 17a-4(f)(3)(v) requires a broker-dealer to “have in place an audit system providing for accountability regarding inputting of records required to be maintained and preserved pursuant to Rules 17a-3 and 17a-4 to electronic storage media and inputting of any changes made to every original and duplicate record maintained and preserved thereby.” During the Relevant Period, the Firm did not have an audit system as required by Rule 17a-4(f)(3) for those records it failed to maintain in WORM format.

Based on the foregoing, RBS violated Exchange Act Rule 17a-4(f)(3)(v), NASD Rules 3110 and 2110, and FINRA Rules 4511 and 2010.

## *4. The Firm’s Supervisory System was not Reasonably Designed*

NASD Rule 3010(b) and FINRA Rule 3110(b) require member firms to establish, maintain and enforce written procedures to supervise the types of business in which it engages ... that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.<sup>4</sup> During the Relevant Period, RBS failed to establish, maintain and enforce written supervisory procedures reasonably designed to achieve compliance with Rule 17a-4(f) WORM requirements. At all times relevant hereto, the Firm’s written supervisory procedures concerning the retention of electronic records in WORM format were limited to

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<sup>3</sup> FINRA Rule 2010 replaced NASD Rule 2110, effective December 15, 2008.

<sup>4</sup> FINRA Rule 3110 replaced NASD Rule 3010, effective December 1, 2014.

electronic communications and did not apply to other broker-dealer records. The Firm's written supervisory procedures also failed to have supervisory processes concerning compliance with the WORM requirement.

Based on the foregoing, RBS violated NASD Rules 3010(b) and 2110, and FINRA Rules 3110(b) and 2010.

B. Respondent also consents to the imposition of the following sanctions:

1. Censure; and
2. Fine in the amount of \$2 million.

Respondent also consents to the following undertaking:

3. Review of Policies and Procedures:
  - a. Within 60 days of Notice of Acceptance of this AWC, the Chief Compliance Officer of the Firm shall submit to FINRA a written plan of how the Firm will undertake to conduct a comprehensive review of the adequacy of the relevant policies and procedures (written and otherwise), including a description of remedial measures leading to full compliance, relating to the conduct addressed in this AWC.
  - b. FINRA will review the plan submitted by the Firm. In the event FINRA objects to the plan, the Firm shall address FINRA's objections and resubmit the plan within 30 days of being notified of FINRA's objections.
  - c. If the Firm's proposed plan is not unacceptable to FINRA, the Firm shall promptly implement its comprehensive review.
  - d. At the conclusion of the Firm's comprehensive review, which shall be no more than 180 days after the Notice of Acceptance of the AWC, the Firm's Chief Compliance Officer shall certify in writing to FINRA that the Firm has adopted and implemented policies and procedures reasonably designed to ensure compliance with the federal securities laws and FINRA rules addressed in this AWC.
  - e. Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

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

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

## **II.**

### **WAIVER OF PROCEDURAL RIGHTS**

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against it;
- B. To be notified of the 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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, 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.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

## **III.**

### **OTHER MATTERS**

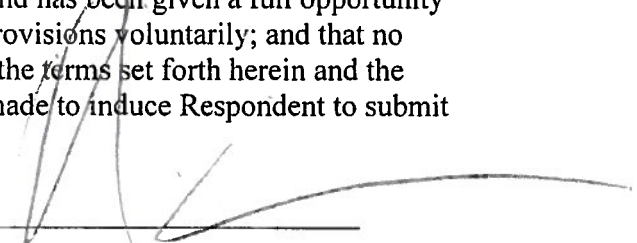
Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and

- C. If accepted:
1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
  2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
  3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
  4. Respondent 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. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

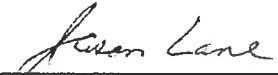
The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent has agreed to its provisions voluntarily; and that no offer,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

12/08/2016  
Date (mm/dd/yyyy)

  
Respondent  
RBS Securities, Inc.

By: PAUL STEVELMAN  
PRESIDENT/CHIEF EXECUTIVE OFFICER  
RBS SECURITIES, INC.

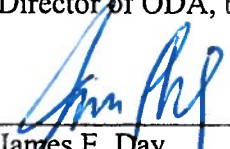
Reviewed by:

  
Counsel for Respondent  
Jason Lane, Senior Counsel  
RBS Securities, Inc.  
600 Washington Boulevard  
Stamford, CT 06901  
Phone: 203-897-9078

Accepted by FINRA:

12/2/16  
Date

Signed on behalf of the  
Director of ODA, by delegated authority

  
James E. Day  
Vice President & Chief Counsel  
FINRA Department of Enforcement  
15200 Omega Drive, Third Floor  
Rockville, MD 20850  
Phone: 301-258-8520