

**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
FINANCIAL CRIMES ENFORCEMENT NETWORK**

**IN THE MATTER OF:** )  
 )  
 ) **Number 2018-03**  
**UBS Financial Services Inc.** )  
**Weehawken, NJ** )

**ASSESSMENT OF CIVIL MONEY PENALTY**

**I. INTRODUCTION**

The Financial Crimes Enforcement Network (FinCEN) has determined that grounds exist to assess a civil money penalty against UBS Financial Services Inc. (UBSFS or the Firm) pursuant to the Bank Secrecy Act (BSA) and the regulations issued pursuant to that Act.<sup>1</sup>

UBSFS has consented to the assessment of a civil money penalty and entered into a CONSENT TO THE ASSESSMENT OF CIVIL MONEY PENALTY (CONSENT) with FinCEN. UBSFS has admitted to the facts set forth in this ASSESSMENT OF CIVIL MONEY PENALTY (ASSESSMENT).

As a full-service broker-dealer, UBSFS offers securities and commodities brokerage services; investment products and advisory services; portfolio management products and services; and execution and clearance services for transactions originated by individual investors. UBSFS reported total assets of more than \$17 billion for the year ending December 31, 2017. UBSFS is a wholly-owned subsidiary of UBS Americas Inc., which is an indirect subsidiary of

---

<sup>1</sup> The Bank Secrecy Act is codified at 12 U.S.C. §§ 1829b, 1951-1959 and 31 U.S.C. §§ 5311-5314, 5316-5332. Regulations implementing the Bank Secrecy Act appear at 31 C.F.R. Chapter X.

UBS Group AG.

FinCEN has the authority to impose civil money penalties on broker-dealers that violate the BSA.<sup>2</sup> Rules implementing the BSA state that “[o]verall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority under this chapter” has been delegated by the Secretary of the Treasury to FinCEN.<sup>3</sup> UBSFS was a “broker or dealer in securities” within the meaning of the BSA and its implementing regulations at all times relevant to this action.<sup>4</sup>

## **II. DETERMINATIONS**

FinCEN has determined that, from 2004 through April 2017,<sup>5</sup> UBSFS willfully violated anti-money laundering (AML) program requirements<sup>6</sup> and willfully violated the requirement under Section 312 of the USA PATRIOT Act<sup>7</sup> to conduct ongoing due diligence on correspondent accounts for foreign financial institutions.

During the time period described above, UBSFS failed to develop and implement an appropriate, risk-based AML program that adequately addressed the risks associated with accounts that included both traditional brokerage and banking-like services. Broker-dealers providing banking-like services enable the flow of funds through mechanisms such as wire transfers, check writing, and ATM withdrawals, creating AML risks that need to be properly

---

<sup>2</sup> 31 U.S.C. §§ 5312(a)(2)(G) and (H) and 5321; Treasury Order 180-01 (July 1, 2014).

<sup>3</sup> 31 C.F.R. § 1010.810(a).

<sup>4</sup> 31 C.F.R. § 1010.100(h) and (t)(2).

<sup>5</sup> With respect to certain of the violations herein, UBSFS in 2012 discovered and attempted to remediate the issues. However, FinCEN has concluded that those remedial steps were inadequate.

<sup>6</sup> 31 U.S.C. § 5318(h); 31 C.F.R. § 1023.210.

<sup>7</sup> 31 U.S.C. § 5318(i); 31 C.F.R. 1010.610(a).

mitigated. Although brokerage firms may provide such services to their clients, those doing so need to apply policies and procedures to ensure that the firm does not become a conduit for movement of illicit funds. UBSFS failed to implement appropriate policies and procedures to ensure the detection and reporting of suspicious activity through all accounts—particularly for those accounts through which funds were moved but that exhibited little to no securities trading. In addition, due to weaknesses in its automated monitoring system, UBSFS failed to adequately monitor foreign currency-denominated wire transfers conducted through commodities accounts and retail brokerage accounts. UBSFS also failed to hire and retain sufficient AML compliance staff to meet its obligations under the BSA. As a result of insufficient staffing, the Firm had a backlog of cases, which hindered its ability to investigate and report suspicious activity in a timely manner. Finally, UBSFS also violated its statutory requirement to conduct ongoing due diligence on foreign correspondent accounts.

#### **A. Violations of AML Program Requirements**

UBSFS failed to develop and implement an effective AML program. The BSA and its implementing regulations require broker-dealers to establish and implement AML programs.<sup>8</sup> A broker-dealer must implement and maintain an AML program that complies with the rules, regulations, or requirements of its self-regulatory organization (SRO).<sup>9</sup> The Financial Industry Regulatory Authority (FINRA) is UBSFS's SRO and examines the Firm for compliance with the BSA and its implementing regulations and for compliance with FINRA Rule 3310. FINRA requires each of its member firms to establish and maintain a written AML program that, at a minimum, includes: (a) policies and procedures that can be reasonably expected to detect and

---

<sup>8</sup> 31 U.S.C. § 5318(h).

<sup>9</sup> 31 C.F.R. § 1023.210.

cause the reporting of suspicious transactions under 31 U.S.C. § 5318(g); (b) policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA; (c) independent testing of the firm's AML program to be conducted annually, unless the firm does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts, in which case independent testing must be conducted biennially; (d) designation of an AML compliance officer; and (e) ongoing training of appropriate personnel. As set forth in greater detail below, UBSFS failed to implement policies and procedures reasonably expected to detect and cause the reporting of suspicious transactions. UBSFS failed to comply with its obligation to provide to the AML compliance officer the resources needed to ensure day-to-day compliance.

1. Policies and Procedures to Detect Suspicious Transactions

UBSFS failed to develop and implement an appropriate, risk-based AML program that adequately addressed certain risks associated with accounts that offered banking-like services and failed to adequately monitor foreign currency-denominated wire transfers conducted through commodities accounts and retail brokerage accounts.

a. Brokerage Accounts Offering Banking-Like Services

Brokerage accounts that offer banking-like services allow customers to engage in a wider range of transactions than either traditional brokerage accounts or traditional bank accounts allow, including wire transfers, journal transfers between accounts within the firm, ACAT

transfers<sup>10</sup> between accounts at other broker-dealers, ACH transfers,<sup>11</sup> ATM withdrawals,<sup>12</sup> check writing, and securities transactions.

Appropriate understanding of the customers engaging in such transactions is essential to an effective compliance program. In the case of UBSFS, the Firm failed to adequately address this requirement in its treatment of shell companies; more specifically, activity in certain of UBSFS's brokerage accounts exhibited several indicia identified by FinCEN as common money laundering "red flags" associated with shell companies. Shell companies can be used to mask the beneficial ownership of account assets and can make the tracking of funds movements more difficult for law enforcement and tax officials. In 2006, FinCEN published interpretive guidance on money laundering risks associated with shell companies.<sup>13</sup> In that guidance, FinCEN stated that the risk associated with providing financial services to shell companies depends "on the ownership structure, nature of the customer, the services provided, the purpose of the account, [and] the location of the services," among other things.

UBSFS failed to develop sufficient policies and procedures to address the AML risks associated with providing financial services to shell companies, including the potential for straw ownership and risks related to the commingling of funds. UBSFS did not have adequate

---

<sup>10</sup> The National Securities Clearing Corporation's Automated Customer Account Transfer (ACAT) Service facilitates the transfer of securities from one trading account to another at a different brokerage firm or bank.

<sup>11</sup> Automated Clearing House (ACH) is an electronic network for financial transactions in the United States. ACH processes large volumes of credit and debit transactions, including direct deposit, payroll, and vendor payments, in batches.

<sup>12</sup> While UBSFS is not a bank and neither accepts nor dispenses cash, it allows brokerage customers to access cash at ATMs via debit cards.

<sup>13</sup> Financial Crimes Enforcement Network, "Potential Money Laundering Risks Related to Shell Companies," FIN-2006-G014 (November 9, 2006). [[http://www.fincen.gov/statutes\\_regs/guidance/pdf/AdvisoryOnShells\\_FINAL.pdf](http://www.fincen.gov/statutes_regs/guidance/pdf/AdvisoryOnShells_FINAL.pdf)]

procedures for detecting red flags relating to certain transfers of funds among accounts at UBSFS. The Firm had no mechanism to detect large money movements with little to no securities trading, a commonly known red flag for potential money laundering in brokerage accounts. Thus, UBSFS failed to deal appropriately with this particular category of customer that was using securities-related accounts for the movement of funds.

FinCEN has identified the following as common money laundering red flags associated with shell companies:<sup>14</sup>

- Payments have no stated purpose, do not reference goods or services, or identify only a contractor invoice number;
- A company's purported goods and services do not match the company's profile based on information previously provided to the financial institution;
- Transacting businesses share the same address, provide only a registered agent's address, or raise other address-related inconsistencies;
- An unusually large number and variety of beneficiaries receive wire transfers from one company;
- Frequent involvement of beneficiaries located in high-risk, offshore financial centers; and
- Multiple high-value payments or transfers with no apparent legitimate business purpose.

Over several years, UBSFS processed through certain of its brokerage accounts hundreds of transactions that exhibited red flags, such as those above, associated with shell company activity. The transactions involved amounts aggregating in the millions of dollars and included

---

<sup>14</sup> Ibid.

multiple deposits, withdrawals or transfers in large amounts, often with no corresponding transaction in securities, and frequent transfers among accounts at UBSFS with no apparent business or investment purpose. For example, one group of related accounts engaged in a pattern of moving money between banks in Taiwan and Singapore through their UBSFS accounts via wire transfers and journal entries. The accounts were set up as retirement accounts, and there was no apparent business or investment purpose that would account for the volume and frequency of the money movements.

UBSFS also failed to develop sufficient policies and procedures to address the AML risks associated with foreign clients' use of brokerage accounts that offered banking-like services. Both the Miami and San Diego branches of UBSFS had a significant number of foreign clients, many of whom used their accounts to conduct a high volume of money movements with minimal trading in securities. This is another example of UBSFS's failure to account for a higher-risk category of customer using securities accounts for the purpose of moving funds rather than for trading purposes.

b. Commodities Accounts and Retail Brokerage Accounts

Beginning in 2004, UBSFS failed to adequately monitor foreign currency-denominated wire transfers conducted through commodities accounts. A customer could send and receive wires denominated in foreign currencies through the customer's commodities account. UBSFS's AML monitoring system failed to capture critical information about these foreign currency-denominated wires, such as sender and recipient information and the country of origin and destination.<sup>15</sup> The gap in the automated monitoring system applied to thousands of wire transfers amounting to tens of billions of dollars sent or received through commodities accounts, including

---

<sup>15</sup> FinCEN's investigation focused on UBSFS's surveillance of transactions for the purpose of compliance with the BSA and did not involve an assessment of the Firm's other surveillance processes.

transfers to and from countries known for heightened money laundering risk. While UBSFS analysts were able to access sender and recipient information and country of origin on a case-by-case basis through other UBSFS systems, this was not sufficient oversight to monitor large volumes of transactions for suspicious activity in compliance with the BSA. The weaknesses in monitoring meant that it was possible for an unknown third-party residing in a country known for money-laundering risk to transfer foreign currency into a customer's commodities account, and for that customer to then transfer these funds to another party in a country known for money-laundering risk, without the Firm's surveillance system reviewing these transactions.

In August 2012, UBSFS implemented a manual review of a report of foreign currency-denominated wires into and out of commodities accounts, but due to the volume and complexity of international foreign currency-denominated wire activity, the manual review was insufficient to identify patterns of suspicious activity and ensure compliance with the BSA's monitoring requirements.

UBSFS also failed, beginning in 2004, to adequately monitor foreign currency-denominated wire transfers sent or received through retail brokerage accounts. The automated monitoring system captured only the amount and date of the transaction on one side of the transaction – not the identity or geographic location of the persons sending or receiving the wires. As a result, the Firm was unable to identify and investigate potentially suspicious transactions based on the presence of important risk factors, such as jurisdiction and the potential involvement of politically-exposed persons (PEPs). While UBSFS adjusted its automated surveillance tool in July 2012 to enhance its review of foreign currency transactions in retail accounts, this measure was not sufficient for BSA compliance because the system still failed to capture certain information related to the foreign currency denomination and the identity of

certain parties to the transaction, and the jurisdictions involved.

2. **UBSFS Did Not Provide Adequate Resources to the AML Compliance Officer**

During much of the relevant period, UBSFS failed to provide its AML compliance officer with the resources needed to ensure day-to-day compliance with the BSA. UBSFS at certain times lacked the staff needed to review the alerts that were generated relating to potentially suspicious activity. This resulted in the Firm's failure to adequately review certain cases of potentially suspicious activity triggered by its automated monitoring system and to make reasonable determinations whether or not to file suspicious activity reports (SARs). Inadequate staffing led to a significant backlog of alerts and decreased UBSFS's ability to file SARs in a timely manner. In a May 2011 internal memo, responding to a request for headcount analysis, a senior UBSFS manager raised concerns about the level of staffing in the AML compliance group, pointing out that the Firm had reduced AML headcount from 41 to 29 employees from January 2008 through May 2011, despite an increase in the volume and complexity of AML investigations over that same period. According to the memo, UBSFS experienced an increase in investigations of more than 80% from 2007 to 2010 and an increase of 58% in the number of SARs filed over the same period. It was not until a year later, in June 2012, that UBSFS approved one new AML staff position.

**B. Due Diligence on Correspondent Accounts for Foreign Financial Institutions**

UBSFS failed to perform periodic reviews of its correspondent accounts for foreign financial institutions. Correspondent accounts are gateways to the U.S. financial system. As part of their AML obligations, U.S. broker-dealers maintaining correspondent accounts in the United States for foreign financial institutions must apply due diligence to those correspondent

accounts.<sup>16</sup> Broker-dealers must develop risk-based policies, procedures, and controls that are reasonably designed to (a) gather all relevant due diligence information concerning such foreign correspondent accounts, (b) employ this due diligence information to determine whether an account is subject to enhanced due diligence,<sup>17</sup> (c) conduct assessments of money laundering risks for each account, including a periodic review of the correspondent account activity to determine consistency with information obtained about the type, purpose, and anticipated activity of the account, and (d) comply with suspicious activity reporting requirements.<sup>18</sup>

UBSFS failed to implement a reasonably designed procedure for conducting ongoing periodic reviews of correspondent account activity to determine whether the activity was consistent with the type and purpose of the account, as well as the anticipated account activity. As a result, some foreign financial institution correspondent accounts were not reviewed to ensure that the customer information was reliable, current, and appropriately rated for risk.<sup>19</sup>

### **III. CIVIL MONEY PENALTY**

FinCEN has determined that UBSFS willfully violated the BSA and its implementing regulations, as described in this ASSESSMENT, and that grounds exist to assess a civil money penalty for these violations.<sup>20</sup>

FinCEN considered the size and sophistication of UBSFS, a large broker-dealer and part of a large international financial institution. Further, FinCEN noted the severity and duration of

---

<sup>16</sup> 31 U.S.C. § 5318(i)(1).

<sup>17</sup> The requirement to conduct enhanced due diligence would apply to those broker-dealers that maintain correspondent accounts for certain foreign banks. *See* 31 C.F.R. § 1010.610(b) and (c).

<sup>18</sup> 31 C.F.R. §§ 1010.610(a)(1), (2), and (3).

<sup>19</sup> 31 C.F.R. §§ 1010.610(a)(1), (2), and (3).

<sup>20</sup> 31 U.S.C. § 5321(a)(1) and (a)(7); 31 C.F.R. § 1010.820

the Firm's BSA violations. For more than a decade, UBSFS failed to implement sufficient policies and procedures that adequately addressed the risks associated with the products and services it offered. FinCEN also recognized UBSFS's cooperation with FinCEN, the SEC, and FINRA. UBSFS self-identified and reported many of the regulatory concerns related to the foreign currency-denominated wire transfers.

Finally, FinCEN recognized that UBSFS made significant investments in BSA/AML staffing and technology, demonstrating its commitment and ability to correct the issues described in this ASSESSMENT through significant remedial efforts, including:

- Enhanced Surveillance System: In early 2016, UBS AG began the process of upgrading its AML surveillance monitoring system globally across all of its separate business lines to an upgraded system. Once fully implemented at UBSFS, the new system will provide enhanced grouping and alert features, thus strengthening the ability to monitor transactions between related accounts. For example, the system's "burst" feature will detect transfers that would not alert under UBSFS's current threshold, but which are nonetheless suspicious based on their frequency and associated patterns.
- Accountability: UBSFS has enhanced its oversight of AML monitoring and also implemented back-testing protocols, which help enhance the quality of the alerts and reduce false positives.
- Enhanced Training and Minimum Standards for Key AML Monitoring Staff: In order to enhance the quality of alert handling, UBSFS has set minimum experience requirements for its AML monitoring staff and provided them extensive training.

- Alert Handling, Documentation, and Inventory Tracking: UBSFS has enhanced its minimum standards for alert handling, documentation and tracking. The enhancements include, among other things, detailed written instructions on how to handle alerts, document a review, and escalate an alert through the proper personnel channels.
- Quality Assurance: Under the new quality assurance (QA) system, UBSFS assesses the quality of the AML monitoring analysts' work and substantive accuracy of the disposition of the alert. Findings are reported monthly to designated senior officers.

### **Resolution with the Securities and Exchange Commission**

The Securities and Exchange Commission (SEC) is UBSFS's primary federal regulator and, through its National Exam Program, examines broker-dealers, including UBSFS, for compliance with the BSA and its implementing regulations and similar rules under Title 15 of the United States Code. The SEC has simultaneously brought an enforcement action against UBSFS (*In re UBS Financial Services Inc.*, Rel. No. 34-84828 (Dec. 17, 2018) for not identifying certain long-term patterns of suspicious activity, which resulted in UBSFS not filing SARs on some suspicious transactions, as required by Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-8 thereunder.

### **Resolution with FINRA.**

FINRA is a self-regulatory organization delegated authority by the SEC for examining its member firms, including UBSFS, for compliance with the BSA and its implementing regulations. FINRA also issues regulations that govern the conduct of its members, including regulations that impose minimum standards for AML programs. FINRA has simultaneously brought an enforcement action against UBSFS in a Letter of Acceptance, Waiver and Consent

(Matter No. 2012034427001) for failing to establish and implement an adequate AML program, in violation of FINRA Rule 3310.

FinCEN has determined that the penalty in this matter will be \$14.5 million, of which \$9.5 million will be satisfied through payment of the penalties imposed by the SEC and FINRA. The remaining \$5 million shall be paid to the United States Department of the Treasury.

#### **IV. CONSENT TO ASSESSMENT**

To resolve this matter, and only for that purpose, UBSFS has consented to the assessment of a civil money penalty in the amount of \$14.5 million and admitted to the facts described in this ASSESSMENT. FinCEN and UBSFS have agreed that \$9.5 million of the civil money penalty will be concurrent with penalties paid to the SEC and FINRA.

UBSFS has recognized and stated that it entered into the CONSENT freely and voluntarily and that no offers, promises, or inducements of any nature whatsoever were made by FinCEN or any employee, agent, or representative of FinCEN to induce UBSFS to enter into the CONSENT, except for those specified in the CONSENT.

UBSFS understands and agrees that the CONSENT embodies the entire agreement between UBSFS and FinCEN relating to this enforcement matter only, as described in Section II of this ASSESSMENT. UBSFS further understands and agrees that there are no express or implied promises, representations, or agreements between UBSFS and FinCEN other than those expressly set forth or referred to in the CONSENT or this ASSESSMENT, and that nothing in the CONSENT or this ASSESSMENT is binding on any other agency of government, whether Federal, State or local.

#### **V. PUBLIC STATEMENTS**

UBSFS has agreed that it shall not, nor shall its attorneys, agents, partners, directors,

officers, employees, affiliates, or any other person authorized to speak on its behalf, make any public statement contradicting either its acceptance of responsibility in the CONSENT or any finding in Section II of this ASSESSMENT. FinCEN has sole discretion to determine whether a statement is contradictory and violates the terms of the CONSENT. If UBSFS, or anyone claiming to speak on behalf of UBSFS, makes such a contradictory statement, UBSFS may avoid a breach of the CONSENT by repudiating such statement within 48 hours of notification by FinCEN. If FinCEN determines that UBSFS did not satisfactorily repudiate such statement(s) within 48 hours of notification, FinCEN may void, in its sole discretion, the releases contained in the CONSENT and reinstitute enforcement proceedings against UBSFS. UBSFS has agreed to waive any statute of limitations defense to the reinstated enforcement proceedings and further agreed not to contest any finding made in Section II of this ASSESSMENT. The agreement described in this paragraph does not apply to any statement made by any present or former officer, director, employee, or agent of UBSFS in the course of any criminal, regulatory, or civil case initiated against such individual, unless UBSFS later ratifies such claims, directly or indirectly. UBSFS has further agreed that, upon notification by FinCEN, UBSFS will repudiate such statement to the extent it contradicts either its acceptance of responsibility set forth in the CONSENT or any finding in Section II of this ASSESSMENT.

## **VI. RELEASE**

Execution of the CONSENT, and compliance with the terms of the CONSENT, settles all claims that FinCEN may have against UBSFS for the conduct described in Section II of this ASSESSMENT. Execution of the CONSENT, and compliance with the terms of the CONSENT, does not release any claim that FinCEN may have for conduct by UBSFS other than conduct described in Section II of this ASSESSMENT, or any claim that FinCEN may have

against any party other than UBSFS, including any current or former director, officer, or employee of UBSFS. UBSFS has agreed that, upon request, UBSFS shall truthfully disclose to FinCEN all factual information not protected by a valid claim of attorney-client privilege or work product doctrine concerning the conduct of third parties, including any current or former director, officer, or employee of UBSFS, in relation to the conduct described in Section II of this ASSESSMENT.

UBSFS has made certain assertions, described in Section III of this ASSESSMENT, regarding its remediation efforts. In addition, UBSFS has stated to FinCEN that, during the period from January 1, 2016, to March 1, 2018, UBSFS or its direct or indirect parent companies spent over \$22 million in the design and implementation of an automated monitoring system that would apply globally to transactions conducted at UBSFS and its affiliates. Finally, UBSFS has stated to FinCEN that, during the period from January 1, 2016, to March 1, 2018, UBSFS increased its permanent monitoring staff from ten individuals to 20 individuals and its permanent investigations staff from eight individuals to 15 individuals. The accuracy of these assertions is a condition to the settlement of any claim that FinCEN may have against UBSFS for the conduct described in Section II of this ASSESSMENT.

By:

\_\_\_\_\_/S/\_\_\_\_\_  
Kenneth A. Blanco, Director  
FINANCIAL CRIMES ENFORCEMENT NETWORK  
U.S. Department of the Treasury

December 11, 2018  
Date: