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January 14, 2015

Via Electronic Mail

Mary J. Kosterlitz, Esq.
Chief of the Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: In the Matter of UBS (File No. NY-8692)

Dear Ms. Kosterlitz:

I write on behalf of this firm's client UBS AG in connection with the anticipated settlement of an administrative proceeding (the "Proceeding") brought against UBS AG's indirect wholly-owned subsidiary UBS Securities LLC ("UBSS") by the U.S. Securities and Exchange Commission (the "Commission"). The Proceeding arises out of UBSS' operation of a registered alternative trading system (the "UBS ATS").

UBS AG is a financial services company and foreign private issuer under Rule 3b-4(c) of the Securities Exchange Act of 1934. UBS AG qualifies as a "well-known seasoned issuer" as defined in Rule 405 of the Securities Act of 1933 (the "Securities Act"). UBS AG respectfully requests that the Division of Corporate Finance (the "Division"), acting under delegated authority on behalf of the Commission, determine that UBS AG shall not be considered an "ineligible issuer" as defined in Rule 405 as a result of the cease-and-desist order to be entered in the Proceeding (the "Order"), which is described below. Consistent with the framework outlined in the Division's Revised Statement on Well-Known Seasoned Issuer Waivers issued on April 24, 2014 (the "Revised Statement"), good cause exists to grant the requested waiver, in that the conduct alleged in the Order does not relate in any way to UBS AG's filings with the Commission or its financial statements and the alleged violations giving rise to this request were remedied more than two years ago.

UBS AG requests that the Division's determination that UBS AG shall not be considered an ineligible issuer be made effective upon entry of the Order. Based upon discussions with

attorneys in the Division of Enforcement, we understand that the Division of Enforcement will not object to this request.

BACKGROUND

The Order alleges that prior to March 2011 and July 2012, respectively, UBSS failed to timely disclose to all subscribers to the UBS ATS two new features of the ATS: (i) a new order type known as Primary Peg Plus ("PPP") and (ii) a crossing restriction referred to as the "natural-only" restriction. The PPP order type permitted subscribers to the UBS ATS to tie or "peg" the price of their orders to the national best bid (or national best offer) plus (or minus) a specified percentage of the difference between the two. The natural-only crossing restriction enabled certain clients of UBSS to prevent their orders from executing in the UBS ATS against order flow that UBSS determined was short term and opportunistic in nature.

The PPP order type was launched in June 2010 and discontinued in March 2011. During that period, the Order alleges, UBSS failed to notify approximately nine of thirty-five subscribers that the order type was available. The natural-only crossing restriction was rolled out beginning in March 2010 but, the Order alleges, was not fully disclosed to all subscribers until July 2012.

UBSS has reached an agreement in principle with the Division of Enforcement by which UBSS, without admitting or denying the matters set forth in the Order, except as to the jurisdiction of the Commission, will be found to have violated Section 17(a)(2) of the Securities Act. UBSS will also be found to have violated Rule 612 of Reg NMS (the "Sub-Penny Rule"), Reg ATS Rules 301(b)(5) (the "Fair Access Rule"), 301(b)(10) (restricting access to confidential subscriber information), and 301(b)(2) (requiring timely and accurate amendments to Form ATS), and Section 17(a) of the Exchange Act and Rule 17a-4 thereunder (maintenance of specified books and records). Under the Order, UBSS will be censured, ordered to cease and desist from further violations of those statutes, rules and regulations, and required to disgorge approximately $2.24 million in commission revenue and approximately $235,000 in prejudgment interest, and pay a civil monetary penalty in the amount of $12 million.

DISCUSSION

Under a number of Securities Act rules that became effective on December 1, 2005, a company that qualifies as a "well-known seasoned issuer" as defined in Rule 405 is eligible, among other things, to register securities for offer and sale under an "automatic shelf registration statement," as so defined, and to have the benefits of a streamlined registration process under the Securities Act. Companies that qualify as well-known seasoned issuers are entitled to conduct registered offerings with substantially fewer restrictions, which facilitates their raising of capital. Pursuant to Rule 405, however, a company does not qualify as a well-known seasoned issuer if it is an

"ineligible issuer." Similarly, the Securities Act rules permit an issuer and other offering participants to communicate more freely during registered offerings by using free-writing prospectuses, but only if the issuer is not an "ineligible issuer."[1]

Rule 405 under the Securities Act makes an issuer an "ineligible issuer" if, during the past three years, the issuer or any entity that at the time was a subsidiary of the issuer "was made the subject of any judicial or administrative decree or order arising out of a governmental action" that, among other things, "(A) prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws" or "(B) requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws."[2] Rule 405 also authorizes the Commission to determine, "upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer."[3] The Commission has delegated authority to the Division to grant waivers from any of the ineligibility provisions of this definition.[4]

Based upon the factors set forth earlier this year in the Division's Revised Statement, we respectfully submit that there is good cause for the Division to determine that it is not necessary in the public interest or for the protection of investors for UBS AG to be deemed an "ineligible issuer," notwithstanding that UBS AG will become subject to an otherwise disqualifying order arising out of government action against its subsidiary UBSS in connection with UBSS' operation of the UBS ATS.

A. The Nature of the Alleged Violation and Whether the Violation Casts Doubt on the Ability of the Issuer to Produce Reliable Disclosures to Investors

As discussed above, the Proceeding and the Order do not arise out of UBS AG's activities as an issuer of securities and do not call into question the reliability of UBS AG's public disclosures or UBS AG's continuing ability to produce reliable disclosures in the future. Rather, insofar as they relate to this request, the Proceeding and the Order involve the alleged failure by UBSS to make uniform and timely disclosure to the subscribers of the UBS ATS, all of whom are

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[1] Being an ineligible issuer will disqualify an issuer under the definition of "well-known seasoned issuer," thereby preventing the issuer from using an automatic shelf registration statement (*see* Rule 405) and limiting its ability to communicate with the market prior to filing a registration statement (*see* Rule 163). In addition, being an ineligible issuer will disqualify an issuer, whether or not it is a well-known seasoned issuer, under Rules 164 and 433 under the Securities Act, thereby preventing the issuer and other offering participants from using free-writing prospectuses during registered offerings of its securities.

[2] *See* 17 C.F.R. § 230.405.

[3] *Id.*

[4] *See* 17 C.F.R. § 200.30-1. *See also* note 215 in Release No. 33-8591 (July 9, 2005).

sophisticated electronic broker-dealers, of a new and short-lived order type and a crossing restriction that was available to certain clients of UBSS.

Significantly, the Order does not allege that UBSS acted with scienter in failing to notify all subscribers of the PPP order type or the natural-only crossing restriction. Rather, it alleges that UBSS violated Section 17(a)(2) of the Securities Act, which requires a mental state no more culpable than negligence. UBSS' alleged failure to timely and uniformly notify subscribers to the UBS ATS of a new order type and a new crossing restriction do not implicate the reliability of UBS AG's current financial statements or other public disclosures by UBS AG or the continuing ability of UBS AG to produce reliable disclosures in the future.

B. The Persons Responsible for, and the Duration of, the Alleged Violations

The individuals who allegedly failed to disclose the PPP order type and natural-only crossing restriction promptly to all subscribers were employees of UBSS who supervised or supported the UBS ATS desk.[5] They had no duties or responsibilities regarding the preparation or dissemination of UBS AG's financial statements or public disclosures by UBS AG as an issuer of securities. Indeed, no UBS AG employee participated in, knew or should have known about the misconduct alleged in the Order.

The alleged failure by UBSS to notify certain subscribers to the UBS ATS that the PPP order type was available for their use lasted between approximately June 2010 and March 2011, and the alleged failure to notify all subscribers concerning the natural-only crossing restriction lasted between approximately March 2010 and July 2012.

C. Remedial Measures

In July 2012, UBSS adopted the policy and practice of promptly updating the UBS ATS "Rules of Engagement" whenever a new order type, crossing restriction or other feature or function is added to the UBS ATS. UBSS then sends updated versions of the Rules of Engagement promptly to all subscribers by electronic mail. UBSS' policy of notifying every subscriber of material changes to the operation of the UBS ATS has been codified in UBSS' Written Supervisory Procedures. Since July 2012, UBSS has also taken steps to remediate the other, more technical statutory and regulatory issues alleged in the Order, through means that include new order surveillance and blocking mechanisms, enhancements to the firm's supervisory and compliance policies and procedures, and improved oversight of all aspects of the operation of the UBS ATS.

[5] Importantly, these employees are not alleged to have acted with scienter or an intent to defraud.

While UBSS believes that its remedial measures have succeeded over the two years they have been in place, UBSS also engaged outside counsel to administer two formal training sessions that address the issues underlying the Order to the key operational, legal and compliance personnel who support the UBS ATS. In addition, we note that the UBS ATS desk has been under new management since March 2014 and has been supported by a new head of Equities Legal since August 2012.

The past instances in which the Commission has granted UBS AG a waiver from being considered an ineligible issuer related to wholly different conduct by business units unrelated to the UBS ATS.

- *In the Matter of Auction Rate Securities Liquidity Issues* (File No. HO-10915-A) (Dec. 9, 2008) related to alleged conduct by UBS Financial Services Inc. ("UBSFS") and UBSS in connection with the underwriting, marketing and sale of auction rate securities. This matter alleged that UBSS and UBSFS misled investors into believing that auction rate securities were safe, highly liquid investments that were equivalent to cash or money-market funds.

- *SEC v. UBS Financial Services Inc.* (P-01118) (May 6, 2011) related to the activity of former employees of UBSFS with respect to the temporary investment of proceeds of municipal securities in reinvestment products such as guaranteed investment contracts, repurchase agreements, and forward purchase agreements. The otherwise disqualifying order alleged that former employees of UBSFS engaged in bidding practices that affected the prices for certain of the reinvestment products at issue and the certifications required under applicable regulations. The employees of UBSS involved in the activity described in the order did not have any role with respect to the UBS ATS.

- *In the Matter of UBS Financial Services Inc. of Puerto Rico* (FL-3491) (May 10, 2012) related to conduct by UBS Financial Services Inc. of Puerto Rico ("UBSPR") in connection with secondary market sales of mutual funds to residents of Puerto Rico. The order alleged that UBSPR made misrepresentations and omissions concerning market prices and liquidity of certain non-exchange traded closed-end mutual funds.

- *In the Matter of UBS Securities LLC* (NY-8353) (Aug. 6, 2013) related to the alleged failure to disclose retention of certain upfront premiums in connection with credit default swaps referenced as collateral in a collateralized debt offering that was sold to accredited investors. The employees of UBSS involved in the activity described in the order did not have any role with respect to the UBS ATS.

- *United States of America v. UBS Securities Japan Co. Ltd.* (Sep. 13, 2013) involved the manipulation of benchmark interest rates by UBS Securities Japan Co. Ltd. ("UBSJC").

> The conduct was limited to approximately fourteen employees, none of whom was responsible for preparing UBS AG's disclosures and all of whom resigned or had their employment terminated. UBSJC implemented extensive remedial measures to enhance its compliance environment and risk monitoring, including a comprehensive microlevel review of its business divisions and processes, installation of a dedicated communications monitoring team, adoption of amended employment rules and supervisory procedures, and enhanced training regarding, among other things, full compliance with UBSJC's Code of Conduct and obligation to report inappropriate activities. As a result of an order entered by the U.S. Commodity Futures Trading Commission in December 2012, UBS AG also agreed to comply with significant audit and monitoring conditions of its interest-rate benchmark submissions.

As demonstrated above, none of the conduct alleged in the five otherwise disqualifying orders related to UBS AG's conduct as an issuer of securities and does not call into question UBS AG's ability to make accurate disclosures about its future offerings. Moreover, the orders were wholly unrelated to the UBS ATS or the employees responsible for supervising or supporting the UBS ATS. Accordingly, the conduct alleged in the Order does not call into question the effectiveness of UBS AG's prior remedial measures.

D. Potential Impact of a Denial

UBS AG would suffer severe adverse consequences if it were to become an "ineligible issuer" as a result of the Order. The loss of its status as an eligible issuer could, as described in more detail below, cause UBS AG to lose a significant source of revenue and substantially limit its structured products businesses, which in turn could potentially harm investors and the market as a whole. This would be an unduly severe consequence in light of the conduct at issue in the Order by UBS AG's subsidiary, UBSS.

UBS AG is a global financial institution that relies on the benefits afforded to well-known seasoned issuers in its day-to-day operations. Being a well-known seasoned issuer provides two primary benefits: (1) additional flexibility over a Form F-3 when issuing from a shelf registration; and (2) the ability to communicate more freely with investors using free-writing prospectuses ("FWPs").

UBS AG regularly relies on its eligible issuer status to offer securities using its shelf registration. Losing its status as a well-known seasoned issuer would impose additional restrictions on UBS AG's use of a shelf registration. Among other things, UBS AG would be required to pay all fees upfront at the time of registration and include additional information in its registration statements. Further, UBS AG's registration statements would be subject to a review period. All of these consequences would impose additional administrative burdens on UBS AG.

The more serious impact of being considered an ineligible issuer, however, would be the limitations on UBS AG's ability to communicate with investors using free-writing prospectuses, which convey targeted and relevant information to customers in a user-friendly format that is often easier to understand than the typically more dense statutory prospectus. The SEC has recognized that investors and the securities markets benefit from the use of FWPs, which among other things facilitate greater transparency to investors.[6]

UBS AG employs user-friendly FWPs to offer securities on an almost daily basis. For the twelve-month period beginning August 1, 2013, and ending July 31, 2014, UBS AG issued securities in 2,630 offerings, only 17 of which did not utilize an FWP. The aggregate principal amount of the 2,613 offerings in which UBS used some form of FWP was approximately $3.5 billion. As described below, the loss of its eligible issuer status would limit the amount of relevant information available to investors and force UBS AG to significantly alter or eliminate its exchange-traded note ("ETN") and structured product businesses, which could result in a loss of nearly $70 million in revenue per year.

1. Exchange-Traded Notes.

UBS AG is an active issuer of ETNs, which are fixed term debt securities indexed to the performance of a reference index. UBS AG currently offers twenty ETNs and regularly produces written materials in FWP format to provide investors with summary information regarding those ETNs. UBS AG relies on its ability to post fact sheets, press releases and email distributions on its website to provide transparency to ETN investors regarding performance and income payments. Each of these forms of communication is a permitted form of FWP that is filed with the SEC. These documents are primarily communicated to investors through UBS AG's E-TRACS website. As an ineligible issuer, UBS AG would be unable to use these methods of communicating with investors. Among other things, UBS AG anticipates that ineligible issuer status would require it to shut down or severely limit its informational E-TRACS website and significantly reduce product transparency for investors.

The inability to use FWPs could result in significant redemptions of UBS AG's ETNs for two reasons. First, we expect that investors would prefer to invest in ETNs issued by companies that can provide the kind of user-friendly, summary information contained in FWPs. Second, limiting the flow of information regarding ETNs by eliminating FWPs could also reduce market maker participation in ETNs, which would cause wider spreads and potential dislocation of the ETN's market prices from their intrinsic value. Redemption of all of UBS AG's outstanding ETNs would result in an annual revenue loss by UBS AG of approximately $45 million.

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[6] Securities Offering Reform, Securities Act Release No. 8501 (Nov. 3, 2004).

2. UBS Equity Investor System.

UBS AG would also be required to eliminate or substantially overhaul its structured products business, which also relies heavily on FWPs. Most of the FWPs for UBS AG's structured products are generated from its Equity Investor System ("EQI"), which is an automated system used to price and issue multiple structured product offerings daily based on input from investors. EQI uses embedded risk management parameters and documentation templates to automatically generate pricing terms and preliminary and final offering documentation. All FWPs and prospectus supplements generated by EQI are automatically filed with EDGAR upon use.

EQI-generated offerings represent a majority of UBS AG's structured product business by number of offerings. Of the 2,630 offerings by UBS AG between August 2013 and July 2014, 2,223, or approximately 84%, were generated using EQI. EQI allows UBS AG to meet investor demand by creating offerings smaller than $1 million, allowing greater, customized investor access to structured notes. The average EQI offering has a principal amount of around $250,000. These small-denomination offerings provide investors with customized investment opportunities. The magnitude of this demand is illustrated by the number of UBS AG's structured note offerings relative to its competitors. According to a recent Bloomberg Brief, UBS AG had issued more than twice as many structured products as the next largest issuer.[7] Being an ineligible issuer would render UBS AG unable to utilize the current EQI system. As a result, UBS AG would be required to reprogram and reformat the entire EQI system, which would require the immediate shutdown of the EQI platform. We estimate that an immediate shutdown of the EQI system would result in an estimated revenue loss to UBS AG of $1.5 to $2 million per month ($18 million to $24 million per year).

While the cost to replace or reprogram EQI is uncertain, it is worth noting that UBS AG has spent in excess of 1,100 hours of outside counsel time, hundreds hours of internal time and approximately $1.8 million in combined IT and outside legal costs over a period of 12 months to develop additional products that could make use of EQI, which would have to be modified or abandoned if UBS AG were to lose its status as an eligible issuer.

3. Other Structured Products.

UBS AG also utilizes FWPs to market structured products outside of the EQI system. To date, in 2014, UBS AG has offered structured products with an aggregate principal amount of approximately $2.3 billion in 300 registered non-EQI offerings. An FWP was used in nearly 95% of these offerings.

Loss of eligible issuer status would impose a significant, immediate hardship on UBS AG's structured product businesses. Not only would UBS AG be unable to utilize the current EQI system, but it would also be removed from the competitive bidding process for certain third-

[7] See Bloomberg Brief: Structured Notes, Sept. 18, 2014, "Rankings by Asset Class: U.S.", p. 8 (citing "deal count" based on SEC Filings through September 12, 2014).

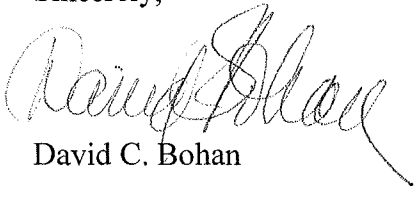
party distributors due to its inability to produce FWPs. Third-party distributors occasionally request that UBS AG provide a one-to-two-page FWP as part of the investor package. As an ineligible issuer, UBS AG could be unable to participate in the bidding for these offerings, which could have repercussions for the entire market if distributors are unable to deliver the potentially superior terms that UBS AG could have offered.

Again, UBS AG's structured products business and its ETN business are wholly separate from the ATS desk of UBS AG's subsidiary. Limiting UBS AG from making use of FWPs would be an unduly and disproportionately severe outcome for alleged conduct by UBSS that UBSS voluntarily discontinued and remedied more than two years ago.

For the foregoing reasons, UBS AG submits that it is not necessary, either in the public interest or for the protection of investors, for UBS AG to be deemed an "ineligible issuer" and that good cause exists for the relief requested herein. We therefore request that the Division, acting pursuant to authority duly delegated by the Commission and pursuant to paragraph (2) of the definition of "ineligible issuer" in Rule 405, determine that under the circumstances UBS AG will not be considered an "ineligible issuer" within the meaning of Rule 405 as a result of the Order.

Please call me at your earliest convenience if you have any questions regarding this request or require any additional information.

Sincerely,



David C. Bohan

cc: Stephen A. Larson, Enforcement Division, U.S. Securities and Exchange Commission
Charles D. Riely, Enforcement Division, U.S. Securities and Exchange Commission