

May 20, 2015

VIA FIRST CLASS MAIL AND EMAIL

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Chief, Office of Small Business Policy  
Division of Corporate Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E., 3rd Floor  
Washington, D.C. 20549-3628

**United States of America v. UBS AG**

Dear Mr. Abero:

We submit this letter on behalf of our client, UBS AG, the settling defendant in the above-captioned criminal proceeding (the "Settling Firm"), in connection with a criminal Information brought by the United States Department of Justice, Criminal Division, Fraud Section ("Department of Justice"), Plea Agreement, Guilty Plea, and Judgment, which are described more fully below.

The Settling Firm hereby requests, pursuant to 506(d)(2)(ii) of Regulation D promulgated under the Securities Act of 1933 (the "Securities Act"), waivers of any disqualifications from relying on the exemption under Rule 506 of Regulation D that will arise with respect to the Settling Firm or any other person as a result of the entry of a Guilty Plea by the Settling Firm, which is described below.

**BACKGROUND**

On December 18, 2012, the United States Department of Justice, Criminal Division, Fraud Section ("DOJ Criminal Division") and the Settling Firm entered into a Non-Prosecution Agreement ("LIBOR NPA") related to the LIBOR Conduct, described and defined below.

Following an initial media report in June 2013 of widespread irregularities in the foreign exchange ("FX") markets, the Settling Firm immediately commenced an internal review of its FX business (although the article did not implicate the Settling Firm). After identifying certain issues, the Settling Firm notified the DOJ Criminal Division (as well as

the Antitrust Division of the Department of Justice and other authorities) that it had identified evidence of potential FX market trading coordination and thereafter provided extensive cooperation to the Department of Justice and other relevant authorities in connection with investigations into FX-related conduct.<sup>1</sup>

As set forth in a Plea Agreement, dated May 20, 2015, entered into by the Settling Firm and the DOJ Criminal Division (the "Plea Agreement"), the DOJ Criminal Division determined that the Settling Firm had breached the LIBOR NPA. Relevant considerations in reaching that determination included certain conduct described in Exhibit 1 the Plea Agreement ("Factual Basis for Breach"), namely certain employees engaged in (i) fraudulent and deceptive currency trading and sales practices in conducting certain foreign exchange ("FX") market transactions with customers via telephone, email, and/or electronic chat, to the detriment of the UBS AG's customers, and (ii) collusion with other participants in certain FX markets (the "FX Conduct").

Further, the Settling Firm agreed to:

1. Plead guilty to a one-count Information (the "Information") in the United States District Court, District of Connecticut (the "District Court") charging wire fraud, in violation of Title 18, United States Code Section 1343 and 2. The Information charges that between approximately 2001 and in or about 2010, the Settling Firm devised and engaged in a scheme to defraud counterparties to interest rate derivatives transactions by secretly manipulating benchmark interest rates to which the profitability of those transactions was tied (the "LIBOR Conduct").

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<sup>1</sup> In November 2014, the Settling Firm reached settlements with the U.K. Financial Conduct Authority ("FCA") and the U.S. Commodity Futures Trading Commission ("CFTC") in connection with their investigations into the FX Conduct, and the Swiss Financial Market Supervisory Authority ("FINMA") issued an order concluding its formal proceedings with respect to the FX Conduct and precious metals ("PM") trading. In addition to paying fines, the Settling Firm has ongoing obligations to cooperate with these authorities and to undertake certain remediation, including actions to improve processes and controls and requirements imposed by FINMA to apply compensation restrictions for certain employees and to automate at least 95% of its global FX trading. In December 2014, the Hong Kong Monetary Authority concluded an investigation of the FX Conduct, and found no evidence of collusion or manipulation but did find internal control deficiencies in the Settling Firm's FX trading operations. On May 20, 2015, the Board of Governors of the Federal Reserve System ("Federal Reserve") and the State of Connecticut Department of Banking ("CT DOB") issued a cease and desist order and imposed a civil money penalty upon consent of the Settling Firm related to the FX Conduct (the "Fed-CTDOB Order"). However, none of these settlements will require relief under 17 C.F.R. § 230.506(d)(2)(ii).

The Information charges that the Settling Firm committed wire fraud in furtherance of that scheme in violation of Title 18, United States Code, Sections 1343 and 2 on or about June 29, 2009 by transmitting or causing the transmission of electronic communications, specifically: (i) an electronic chat between a senior derivatives trader (the "UBS Trader") employed by a subsidiary of the Settling Firm and a London-based interdealer derivatives broker (the "Broker"), in which the UBS Trader requested the Broker submit an increased Yen LIBOR rate favorable to the UBS Trader's position; (ii) a telephone call placed by the Broker at the UBS Trader's request to a Yen LIBOR submitter at another Yen panel bank, in which the Broker requested that the submitter increase the panel bank's Yen LIBOR submission that day; (iii) an electronic chat between the UBS Trader and a junior derivatives trader employed by the Settling Firm, who also served as a Yen LIBOR submitter for the Settling Firm (the "UBS Submitter"), in which the UBS Trader requested that the UBS Submitter increase the Settling Firm's Yen LIBOR submission rate to a rate favorable to the UBS Trader's trading positions; (iv) a subsequent Yen Libor submission from the Settling Firm to Thomson Reuters reflecting an accommodation of the UBS Trader's request to the UBS Submitter; and (v) a subsequent publication of a Yen LIBOR rate.

2. Pay a fine of \$203 million in connection with the conduct charged in the Information.
3. A three-year term of probation, in which the Settling Firm, among other things, would (i) not commit another federal crime during the term of probation; (ii) cooperate fully with the DOJ Criminal Division and other authorities in any investigation of the Settling Firm or its affiliates in matters relating to the (a) manipulation of benchmark interest rates, (b) manipulation of, or fraud in, the FX spot and precious metals ("PM") markets, or (c) in connection with UBS's V10 Currency Indices ("V10"); (iii) implement and continue to implement a compliance program designed to prevent and detect misconduct related to the benchmark interest rate and FX markets throughout its operations including those of its affiliates and subsidiaries and to provide annual reports to the probation officer and the DOJ Criminal Division on its progress; (iv) further strengthen its compliance program and internal controls as required by other regulatory and enforcement authorities that have addressed any of the misconduct related to the benchmark interest rate and FX markets; (v) submit to the DOJ Criminal Division any report drafted by any compliance consultant or monitor imposed by the Board of Governors of the Federal Reserve System; and (vi) promptly bring to the attention of the DOJ Criminal Division all credible information regarding a violation of U.S. criminal law (a) concerning fraud or (b) governing the securities or commodities markets.

In turn, the DOJ Criminal Division has agreed that it will not file additional criminal charges against the Settling Firm or any of its affiliates or subsidiaries relating to the LIBOR Conduct, the FX Conduct, and information disclosed to the DOJ Criminal Division prior to the date of the Plea Agreement relating to PM trading markets or relating to V10.

The Applicant expects to enter a guilty plea in the District Court (the “Guilty Plea”) and expects that the District Court will enter a judgment against the Settling Firm (the “Judgment”) that will require remedies that are materially the same as set forth in the Plea Agreement.

### DISCUSSION

The Settling Firm understands that the entry of the Guilty Plea will disqualify the Settling Firm and certain issuers associated in one of the capacities listed below from relying on the exemption under Rule 506 of Regulation D promulgated under the Securities Act. The Settling Firm is concerned that, should it be deemed to be the issuer, a predecessor of the issuer, an affiliated issuer, a general partner or managing member of the issuer, a beneficial owner of 20 percent or more of the issuer’s outstanding voting equity securities, a promoter connected with the issuer in any capacity at the time of the filing, offer or sale, an investment manager of the issuer, a person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of securities of the issuer (a “solicitor”), a general partner or managing member of an investment manager or solicitor of the issuer, or deemed to act in any other capacity described in Securities Act Rule 506 for the purposes of Securities Act Rule 506(d)(1)(i), the Settling Firm as well as the other issuers with which the Settling Firm is associated in one of those listed capacities and which rely upon or may rely upon these offering exemptions when issuing securities would be prohibited from doing so. The U.S. Securities and Exchange Commission (the “Commission”) has the authority to waive the Regulation D exemption disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances. *See* 17 C.F.R. § 230.506(d)(2)(ii).

The Settling Firm requests that the Commission waive any disqualifying effects that entry of the Guilty Plea and Judgment against the Settling Firm will have under Rule 506 of Regulation D on the following grounds:

1. The Settling Firm’s Conduct charged in the Information does not relate to the offer or sale of a security.

The conduct of the Settling Firm as addressed in the Judgment involved a violations relating to interest rate derivatives. Furthermore, we note that the individuals at the Settling Firm who were identified as being responsible for the LIBOR Conduct have either resigned or have been terminated and that the Settling Firm has taken disciplinary actions (including terminations, suspensions and significant penalties related to compensation) against employees who were found through the FX investigation, as discussed in 4.B., below.

2. The Persons Responsible for, and the Duration of, the Alleged Misconduct.

The duration of the alleged misconduct and the persons responsible for the alleged misconduct do not warrant disqualification.

### A. LIBOR

While the Settling Firm acknowledges that the misconduct alleged in the Information occurred over a prolonged period of time (from 2001 through June 2010), it involved only approximately 14 of UBS' approximately 65,000 total employees; members of senior management of UBS were not implicated in the misconduct; none of the misconduct involved the securities offerings relying on Rule 506 of Regulation D ("Rule 506 Offerings"); and while some of the individuals involved in the trader-related conduct described in the Exhibit 3 of the Plea Agreement ("LIBOR Statement of Facts") were employees of the Settling Firm, none of these individuals had any responsibility for, or role in, Rule 506 Offerings. All of the individuals at the Settling Firm who were identified as being responsible for the conduct alleged in the Information have either resigned or have had their employment terminated. Therefore, the misconduct cannot be viewed as pervasive within the Settling Firm.

As none of the members of the Settling Firm's senior management were implicated in the misconduct, the conduct alleged in the Information ended in 2010 and the individuals responsible for the misconduct are no longer employed by the Settling Firm, we believe the foregoing discussion addresses these concerns. Finally, as noted in the discussion concerning remedial actions, the Settling Firm has taken a number of actions to reinforce its commitment to compliance.

### B. FX

The Settling Firm acknowledges that the FX Conduct occurred prior to and continuing after December 18, 2012. It involved less than 10 of UBS' approximately 65,000 total employees. Members of senior management of UBS were not implicated in the misconduct. The Settling Firm has taken appropriate disciplinary action against the individuals responsible for the FX Conduct. In some cases, UBS has delayed taking final action pending resolution of the DOJ Criminal Division's investigation in order to ensure the ongoing cooperation of relevant individuals.

As none of the members of the Settling Firm's senior management were implicated in the misconduct, the conduct alleged has ended, and UBS has already taken or intends to take appropriate disciplinary action we believe the foregoing discussion addresses these concerns. Finally, as noted in the discussion concerning remedial actions, the Settling Firm has taken a number of actions to reinforce its commitment to compliance.

### 3. Role of Individuals in Rule 506 Offerings.

In addition, none of the LIBOR or FX Conduct pertains to activities undertaken by the Settling Firm, its affiliates, or its subsidiaries in connection with Rule 506 Offerings. There is no connection between the alleged conduct and Rule 506 Offerings.

Moreover, neither the Information relating to LIBOR conduct nor the Factual Basis for Breach involves any allegations that the Settling Firm committed scienter-based violations of the Securities Act or the Exchange Act with respect to the conduct.

#### 4. Remedial Steps Taken to Address the LIBOR Conduct and FX Conduct.

The Settling Firm has cooperated with the Department of Justice in the investigation of this matter, and has agreed to continue to cooperate fully with the Department of Justice, and foreign law enforcement authorities and agencies, and to truthfully disclose all factual information related to violations of laws concerning fraud or governing securities or commodities markets of which the Settling Firm is aware to the Department of Justice.

##### A. LIBOR

After extensive investigation, the Department of Justice and the Settling Firm have negotiated a settlement reflected in the Plea Agreement. The Settling Firm has agreed to comply with several undertakings pursuant to the Plea Agreement, including, among other things, the undertakings and payment of the fine described above.

The Settling Firm has previously agreed to various undertakings pursuant to investigations and settlements with the authorities in the United States, the United Kingdom, Japan, Singapore, Hong Kong, and Switzerland related to the LIBOR Conduct. UBS paid fines and disgorgements totaling CHF 1.4 billion to U.S., U.K. and Swiss authorities to resolve investigations related to the LIBOR Conduct, including \$500 million to the Department of Justice, GBP 160 million to the FCA, and CHF 59 million to FINMA.

Further, in connection with an Order dated December 19, 2012, issued by the CFTC with respect to the matters described therein, UBS agreed to extensive undertakings to ensure the integrity and reliability of its benchmark interest rate submissions by (i) determining its submissions based on specific factors, adjustments and considerations; (ii) conducting supervisory review of each daily submission; (iii) ensuring minimum qualifications of submitters and supervisors; (iv) implementing firewalls to prevent improper communications and submissions; (v) providing certain documents to the CFTC upon request and without a subpoena; (vi) developing and maintaining monitoring systems and performing periodic internal audits and annual external audits; (vii) developing policies, procedures and controls to comply with the undertakings; and (viii) developing a training program for all submitters and supervisors and traders who deal with the benchmark interest rate; and (ix) making periodic reports to the commission on compliance with the undertakings. The Settling Firm has complied with these undertakings and submitted a final report to the CFTC on December 18, 2013. The Settling Firm has also complied with additional undertakings imposed by FINMA.

In addition to the specifics steps taken to fulfill the CFTC undertakings, lessons learned from the LIBOR matter drove the Settling Firm to have much greater focus overall on supervising, monitoring and surveillance of intra-day conduct and behaviors to complement the end-of-day control framework that was then prominent. The firm-wide Principles and Behaviors program, sponsored by the Group Chief Executive Officer is designed to significantly strengthen three core behaviors across the firm (Integrity, Collaboration, and Challenge) to strengthen the culture and foster greater alignment to protecting the firm's reputation and ensuring long-term and sustainable performance. In

2013, the Group Chief Executive Officer's decision to integrate the Compliance function with Operational Risk Control was an important step in bringing a risk management approach and control discipline to the Compliance activities in the second line of defense. It has enabled the Settling Firm to clarify the roles, responsibilities and control expectations for the 2nd line of defense and supports the implementation of an industry leading monitoring and surveillance capability.

Based on the lessons learned from the LIBOR investigation itself, the Settling Firm significantly tightened the coordination and governance over high risk legal, regulatory or conduct matters, including establishing a cross-functional investigations sounding board, assigning leadership accountability aligned to the potential tail risk should any allegation or speculation prove to be true, and applying the learnings across the organization. This serves as an important component of the overall compliance program. Fully leveraging this very protocol led to the firm investigating the initial allegations in the media which led to the firm identifying the FX issue and everything that followed.

#### B. FX

As noted above, after learning of potentially inappropriate practices in the FX industry in a media report in June of 2013—which did not specifically implicate UBS AG—a newly formed Investigations Sounding Board launched an internal investigation into potential misconduct in the FX spot markets. From early on in its investigation, UBS AG consistently provided the Department of Justice with detailed, real-time reports of its investigation findings and repeatedly solicited the Department's input and approval of changing investigation priorities and altered significantly the investigation plan on different occasions at the request of the Department. UBS AG believes that it was the first bank to report FX misconduct to the Department of Justice and other authorities.

While the Settling Firm believes that its control environment for FX rates during the investigation period was proportionate to prevailing industry standards and the systems and controls of peer institutions, the Settling Firm has adopted significant remedial measures to address problems that it identified. In fact, the Settling Firm is making a significant investment in adopting measures to align its unregulated FX business with many of the same standards in place for its business in regulated markets.

First, since the early stages of the FX investigation, the Settling Firm has been transitioning its FX business to adopt principles, systems, and controls more akin to that of regulated markets. For example, the Settling Firm is introducing continuous transaction monitoring and detailed time stamping of orders to ensure it can conduct additional forensic analysis of trading activity. These initiatives, although requiring significant further investment in overhauling systems and processes, are developed, funded, and in place.

Second, following detection of the FX issues, the Settling Firm conducted an in-depth review of the FX business to identify areas in need of improvement. Since then, the Settling Firm has undertaken actions to significantly improve compliance monitoring, intraday supervision and operational risk management assessment to more swiftly detect

inappropriate activity. For instance, the Settling Firm has made the following improvements:

*Strengthened Front Office Processes*

- Standardized the fixing order process
- Closed FX management books
- Instituted a formal process of review and supervision of enhanced conduct risk
- Designed brokerage management information in order to facilitate the identification of possible collusion between FX traders and brokers
- Recalibrated the FX “business owned limits” to align them to market risk appetite and historical utilization
- Reviewed the FX supervisory hierarchy
- Revised guidance on handling client error
- Improved the consistency of disclosing trading conflicts in Terms and Conditions to clients
- Updated chat room standards and controls, which were implemented in November 2013
- Prohibited the use of personal mobile phones on trading floors for all Investment Bank sales and trading staff
- Implemented a series of measures to manage obligations and expectation to clients and markets over potential conflicts of interests

*Strengthened Front Office Systems*

- As of December 2014, implemented an enhanced booking and risk management workflow for all FX prime brokerage cash trades, fully segregating prime brokerage components of trades from FX sales and trading

*Enhanced Guidance and Training*

- Significantly strengthened its “FX, Rates & Credit Global Handbook,” which includes new sections covering client and market conduct requirements, behavior, and communication
- Mandatory training (both live and computer-based) linked to these guidelines has been completed for all Investment Bank sales and trading staff globally; this training is mandatory for all Investment Bank staff, including new joiners
- FX management has completed a full review of the content of the “FX, Rates & Credit Global Handbook” against existing Key Procedural Controls, with new controls being implemented where required

UBS has already terminated or will terminate any employees who made knowing misrepresentations or engaged in collusive conduct as described in the Factual Basis for Breach. In certain cases, UBS has delayed taking final action to terminate such employees in order to ensure their ongoing cooperation with governmental investigations and/or to comply with applicable foreign labor laws. Subject to these issues, UBS commits to terminating these employees within eight months of the entry of the Plea Agreement. UBS has already terminated or suspended several employees of the Settling Firm who engaged

UBS 506(d)

in misconduct relating to the FX business, including two employees who engaged in collusive conduct at other institutions.

In addition to the significant remedial measures the Settling Firm has already adopted, the Settling Firm has also agreed to specific remediation undertakings in connection with the November 2014 government resolutions. In connection with the CFTC order described above in footnote 1, the Settling Firm represented that it had already undertaken certain steps intended to make reasonable efforts to ensure the integrity of the FX markets including, but not limited to, the following: (i) strengthening mandatory training requirements for all FX employees, with a heavy focus on appropriate trading behavior; (ii) implementing new procedures regarding the appropriate use of chat rooms as a form of communication, including the prohibition of nearly all participation by Investment Bank staff in multi-bank chat rooms; and (iii) strengthening supervision and surveillance of FX trading desks, including the ongoing introduction of specific trade surveillance systems and enhancements to electronic communication monitoring.

In connection with the FCA settlement, the Settling Firm must conduct an audit of the following areas to ensure its culture, governance arrangements, policies, procedures, systems, and controls are appropriate and adequate to effectively manage specific risks with respect to the FX business: (i) front office culture; (ii) the adequacy of the first line of defense (i.e. the risk and control environment relating to daily operations, including monitoring of traders' activity and conduct); (iii) the adequacy of the second and third lines of defense (e.g. compliance, audit, risk); (iv) the adequacy of the challenge of risk management by the second and third lines of defense; (v) the role and appropriateness of financial incentives and performance management; (vi) the adequacy of training for the specific relevant business area; (vii) the adequacy of communications monitoring and surveillance; (viii) the adequacy of the management of conflicts of interest; and (ix) benchmarks, whether trading, judgment, or submissions based, which fall within any of these business areas. If this audit identifies any areas requiring improvement, the Settling Firm must implement appropriate remedial action.

In connection with the FINMA order, the Settling Firm must (i) automate at least 95% of global FX and PM trading by December 31, 2016; (ii) implement and improve controls with respect to the remaining FX voice trading; (iii) implement adequate monitoring, supervision, and analysis instruments with respect to market abusive conduct in the Investment Bank; (iv) implement and improve control measures to avoid conflicts of interest between client trading and the active proprietary trading (i.e., the trading of traders' own positions on behalf of the bank, independent of risk management/hedging in connection with client orders), including the organizational and personnel separation of client and active proprietary trading; (v) clarify guidelines on personal account dealing, expand controls and oversight of personal account dealing, and enhance sanctions for violations of these guidelines; (vi) conduct an annual review of the compensation process within the Investment Bank through an internal audit regarding the impact of the compliance and risk conduct of employees on their compensation, as well as on the adequacy of senior management decisions made during the process, for a period of two years from fiscal year 2014; (vii) implement a maximum annual variable salary component of twice the fixed annual income (2:1) for the FX and PM trading business for a period of

UBS 506(d)

two years from fiscal year 2014; (viii) implement of a maximum annual variable salary component of twice the fixed annual income (2:1) for persons with a total salary of over CHF 1 million in the Investment Bank for a period of two years from fiscal year 2014 (although there may be exceptions based on adequate consideration of employee conduct and the adherence to compliance objectives); and (ix) strengthen the whistleblower process.

In addition, in the Fed-CTDOB Order, the Settling Firm made a number of significant undertakings that address its internal controls and compliance program and its compliance risk management program. They include the following: (i) submission of enhanced written internal controls and compliance program acceptable to the Federal Reserve and the CT DOB to comply with applicable U.S. federal and state laws and regulations with respect to the Settling Firm's "Designated Market Activities" (as such term is defined in the Fed-CTDOB Order); (ii) submission of a written plan acceptable to the Federal Reserve and the CT DOB to improve the Settling Firm's compliance risk management program with regard to compliance by the firm with applicable U.S. federal and state laws and regulations with respect to Designated Market Activities; (iii) during the term of the Fed-CT DOB Order, the Settling Firm would, utilizing personnel who are independent of the business line and acceptable to the Reserve Bank and the CT DOB, conduct on an annual basis: (1) a review of compliance policies and procedures applicable to the Settling Firm's Designated Market Activities and their implementation, and (2) an appropriate risk-focused sampling of other key controls for the Settling Firm's Designated Market Activities (the "Controls Review"), and (3) submit the results of each Controls Review to the Reserve Bank and the CT DOB within 90 days of the relevant anniversary date of this Order; and (iv) submission of an enhanced written internal audit program acceptable to the Reserve Bank and the CT DOB with respect to the Settling Firm's compliance with U.S. federal and state laws and regulations in its Designated Market Activities. In addition, in connection with other settlements currently being finalized with other regulators, the Settling Firm expects to make a number of significant undertakings that address its internal controls and compliance program and its compliance risk management program.

Also in connection with these resolutions, the Settling Firm and its affiliates paid a total of CHF 774 million, including GBP 234 million in fines to the FCA, \$290 million in fines to the CFTC, \$342 million in fines related to the Fed-CTDOB Order, and CHF 134 million to FINMA representing confiscation of costs avoided and profits.

### C. Additional Firmwide Reform

The work undertaken in relation to FX is part of a much broader program focused on strengthening front office processes and systems, and enhanced guidance and training. This includes (i) transactional monitoring to cover all asset classes and client and proprietary flows; (ii) enhanced monitoring of electronic communications to cover all e-mail flow and chat channels in all jurisdictions; (iii) preliminary monitoring of audio communications; (iv) trader surveillance to monitor and detect rogue trading; (v) monitoring and assessment of employee behavioral indicators to identify outliers; (vi) expanded cross border monitoring that goes beyond the traditional control-based monitoring; and (vii) improved processes associated with the firm's whistleblowing policy.

In addition, the Settling Firm's incentive and compensation structure has been reformed to ensure that inappropriate behavior is not incentivized and that there are consequences for misconduct. The Settling Firm believes that it was the first in the industry to implement longer compensation deferral periods and greater clawback powers. For employees whose compensation exceeds a certain level, a significant portion of their performance award is deferred up to five years and includes forfeiture provisions for material misconduct. In addition, the Settling Firm considers compliance related violations, for example failure to complete mandatory training on time or failure to comply with personal account dealing policy, in an individual's performance review, and repeat violations can lead to sanctions.

#### 5. Impact on the Settling Firm and Third Parties

The disqualification from using (or participating in transactions using) the exemptions under Rule 506 of Regulation D would, we believe, have an adverse impact on the third parties that have retained, or may retain in the future, the Settling Firm and other entities with which the Settling Firm is associated in one of the listed capacities in connection with transactions that rely on those exemptions.

The Settling Firm's wholly-owned subsidiaries, UBS Global Asset Management (Americas) Inc., UBS O'Connor LLC, UBS Alternative and Quantitative Investments LLC and UBS Realty Investors LLC (the "UBS Advisers"), are currently acting as investment manager, general partner and/or managing member to approximately 60 private funds that are currently relying on Rule 506 of Regulation D for securities offerings. These funds are "open end" funds that continuously offer their securities. The Settling Firm and its affiliates do not own 20% of the voting securities of any of these funds.

The UBS Advisers intend to continue to act as investment manager, general partner and/or managing member to private funds that will rely on Rule 506 of Regulation for future offerings. The UBS Advisers and other affiliates of the Settling Firm also acted as promoters and solicitors for private funds in the last three years that relied on Rule 506 for their offerings that raised approximately \$7.4 billion, and it is likely that the UBS Advisers and other affiliates of the Settling Firm will in the future engage in activities that may cause the Settling Firm to be deemed a promoter or a solicitor in Rule 506 offerings.

Under Securities Exchange Act Rule 13d-3, the Settling Firm may be deemed to be the beneficial owner of securities owned by its wholly-owned subsidiaries. At the present time, UBS Global Asset Management (Americas) Inc. owns more than 20 percent of three private funds that are currently relying on or will in the future rely on Rule 506 of Regulation D. We have been advised that the UBS Advisers, the Settling Firm or their affiliates as a matter of business practice provide seed capital to funds that the UBS Advisers are planning to market and manages them for a period of time before bringing them to market. Thus, it is likely that the Settling Firm or an affiliate would own 20 percent or more of private funds that it plans to market in the future.

A disqualification of the Settling Firm pursuant to Rule 506 of Regulation D would have an adverse impact on the Settling Firm, on the other issuers described above that

engage in, or plan to engage in, Rule 506 Offerings for which the Settling Firm serves in the above-specified roles, and on investors in the affected offerings. A disqualification of the Settling Firm would cause it and its covered affiliates to lose their current and future business acting as investment advisers, solicitors and promoters for the issuers raising millions of dollars described above. Issuers would be unable to offer their securities in reliance on Rule 506 of Regulation D, and would be required to either offer securities under an alternative exemption from registration or seek to replace the Settling Firm or a covered affiliate as investment adviser, solicitor or promoter or otherwise terminate their relationship with the Settling Firm or a covered affiliate in the other roles described above. This would place a burden on such issuers, causing them to delay, restrict, or even abandon their offering activities. Investors in such offerings may face the burden of having to find alternative investments if such offerings are delayed, restricted, or abandoned as a result of the disqualification. Investors' returns may also be negatively impacted by the disqualification due to the issuer's impaired ability to raise capital.

If all of the offering activities currently being conducted under Rule 506 of Regulation D were to cease upon the disqualification of the Settling Firm because it could no longer create new funds that could offer securities in reliance on Rule 506, the Settling Firm would be precluded from developing this business further. However, it is difficult to estimate the financial impact of such a development on the Settling Firm.

#### 6. Disclosure to Investors

For a period of five years from the date of the Judgment, the Settling Firm will furnish (or cause to be furnished) to each purchaser in a Rule 506 Offering that would otherwise be subject to the disqualification under Rule 506(d) as a result of the Judgment arising from the Plea Agreement, a description in writing of the Plea Agreement, a reasonable time prior to sale.

In light of the grounds for relief discussed above, we believe that disqualification is not necessary, in the public interest, or for the protection of investors, and that the Settling Firm has shown good cause that relief should be granted. Accordingly, we respectfully request the Commission to waive the disqualification provisions in Rule 506 of Regulation D to the extent that it may be applicable as a result of the entry of the Guilty Plea.<sup>2</sup>

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<sup>2</sup> The Commission has in other instances granted relief under Rule 506(d) for similar conduct. *See, e.g., In re Credit Suisse AG*, Securities Act Rel. No. 9589 (May 19, 2014).

Please do not hesitate to call the undersigned at (202) 383-8050 regarding this request.

Very truly yours,

A handwritten signature in black ink, appearing to read 'K. Berman', with a long horizontal flourish extending to the right.

Kenneth J. Berman