

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	Civil Action No.
	:	
-against-	:	03 Civ. 2943 (WHP)
	:	
UBS SECURITIES LLC, f/k/a	:	
UBS WARBURG LLC,	:	
	:	
Defendant.	:	

FINAL JUDGMENT AS TO DEFENDANT
UBS SECURITIES LLC, f/k/a UBS WARBURG LLC

Plaintiff Securities and Exchange Commission (“Commission”) having filed a Complaint in this action (“Complaint”) and Defendant UBS Securities LLC, f/k/a UBS Warburg LLC (“Defendant”) having (a) entered a general appearance, (b) consented to the Court’s jurisdiction over Defendant and the subject matter of this action, (c) consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction), (d) waived findings of fact and conclusions of law, and (e) waived any right to appeal from this Final Judgment; and the Commission having agreed that, on the basis of this Final Judgment, it will not institute a proceeding against Defendant pursuant to Sections 15(b), 15B, 15C, or 19(h) of the Securities Exchange Act of 1934 (the “Exchange Act”):

I.

Injunctive Relief

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

not necessarily equal) distribution of funds and that those who are allocated funds receive meaningful payments from the Distribution Fund.

C. In formulating the Distribution Fund Plan, the Distribution Fund Administrator shall apply the following criteria to identify Eligible Distribution Fund Recipients:

1. The person must have purchased the “equity securities in question” through Defendant during the “relevant period of purchase.” Identification of the “equity securities in question” and the “relevant period of purchase” for each such equity security will be set forth (solely for the purpose of administering the Distribution Fund Plan) in a further order of the Court.

2. The person must have suffered a net loss on his equity securities purchases in question.

D. In formulating the Distribution Fund Plan, the Distribution Fund Administrator may also consider the following criteria in identifying Eligible Distribution Fund Recipients:

1. whether the person was a retail or institutional customer; and
2. the proximity in time between the person’s purchase of a company’s equity securities and Defendant’s publication of the research in question regarding the company (as a threshold matter, however, the purchase must have been made after the publication or receipt of such research; assuming that threshold has been met, in general, the shorter the time period, the more likely the person suffered a loss as a result of conduct alleged in the Complaint).

E. If it is not practicable to formulate a Distribution Fund Plan that allocates funds to persons who purchased “equity securities in question” during the “relevant period of purchase” as described above, or if it is practicable to allocate only some of the funds in the Distribution Fund to such persons, the Distribution Fund Administrator shall apply alternative or additional

criteria, as the case may be, or other considerations in formulating a Distribution Fund Plan.

Such alternative or additional criteria or other considerations shall be set forth in a further order or orders of the Court.

F. If monies remain in the Distribution Fund after all distributions pursuant to a Distribution Fund Plan described in Sections V.B-V.E above have been made, then such remaining monies shall be paid in accordance with a plan of residual distribution to be proposed by the Distribution Fund Administrator after consultation with Commission staff and, in his sole discretion, Defendant, and approved by the Court. If a residual plan of distribution is necessary, the criteria that the Distribution Fund Administrator shall apply in formulating such a plan will be set forth in a further order or orders of the Court.

G. As soon as is practicable, and after any consultation with experts that the Distribution Fund Administrator believes is necessary or appropriate, but in no event more than six (6) months after being appointed by the Court, the Distribution Fund Administrator will provide the Commission staff and, in his sole discretion, Defendant for review and comment a Distribution Fund Plan, which shall, among other things, describe a process for (1) identifying and categorizing Eligible Distribution Fund Recipients in accordance with the considerations described above; (2) determining the amount of the Distribution Fund that each Eligible Distribution Fund Recipient shall receive; and (3) distributing the Distribution Fund to Eligible Distribution Fund Recipients. Sixty (60) days after the Distribution Fund Plan has been submitted to the Commission staff, the Distribution Fund Administrator shall present the Plan, with any revisions that the Distribution Fund Administrator deems appropriate, to the Court for its approval. In accordance with the Court's Order approving the Distribution Fund Plan, the Distribution Fund Administrator shall implement the Plan. Upon the completion of the process

of identifying the Eligible Distribution Fund Recipients and determining the amount that each should receive, but in no event later than nine (9) months from the Court's approval of the Distribution Fund Plan, the Distribution Fund Administrator shall submit a Distribution Fund Report to the Commission staff and, in his sole discretion, Defendant. The Distribution Fund Report shall set forth (1) the identities of the Eligible Distribution Fund Recipients; (2) the amount of the Distribution Fund that each Eligible Distribution Fund Recipient shall receive; and (3) procedures for distributing the Distribution Fund to Eligible Distribution Fund Recipients. Seven (7) days after submission of the Distribution Fund Report to the Commission staff, the Distribution Fund Administrator shall present the Report to the Court for its approval. The Distribution Fund Administrator and/or the Commission may apply to the Court for extension of any deadlines set forth above, in the Distribution Fund Plan, or in the Distribution Fund Report, and the Court may grant any such application for good cause shown.

VI.

Stay of Proceedings Against the Distribution Fund

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, for the purposes of implementing and effectuating the Final Judgment, and upon a finding hereby made that a stay of any proceedings against the Distribution Fund Administrator in his official capacity and the Distribution Fund during the pendency or the existence of the Distribution Fund is necessary to effectuate the Final Judgment, all creditors or claimants of Defendant, and other persons acting on behalf of such creditors, claimants, or other persons, including sheriffs, marshals, other officers, deputies, servants, agents, employees, and attorneys, be and the same hereby are restrained and enjoined during the pendency or the existence of the Distribution Fund from: (1) commencing, prosecuting, continuing, or enforcing any suit or proceeding against the

Distribution Fund Administrator in his official capacity or the Distribution Fund; (2) using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any monies or property, wheresoever situated, deposited or to be transferred into the Distribution Fund or the Distribution Fund Administrator pursuant to this Final Judgment; and/or (3) doing any act or thing whatsoever to interfere with the taking control, possession, or management by the Distribution Fund Administrator of the monies or property that are or may be transferred to the Distribution Fund, or in any way to interfere with or harass said Distribution Fund Administrator, or to interfere in any manner with the exclusive jurisdiction of this Court over the Distribution Fund.

VII.

Duties and Obligations of Defendant to the Distribution Fund Administrator

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, in addition to any other duties and obligations described in this Final Judgment:

A. Defendant shall upon request provide the following non-privileged documents, records, and information to the Distribution Fund Administrator: (1) research reports issued by Defendant during the relevant period identified in the Complaint; and (2) documents, records, and information relating to customers' equity securities transactions with or through Defendant, including but not limited to account statements, order tickets, confirmations, and related documents, records and information. Defendant shall also provide the Distribution Fund Administrator with such other documents, records, and information that the Court may order Defendant to provide upon motion by the Distribution Fund Administrator. Defendant shall cooperate in arranging for interviews of Defendant's employees to explain to the Distribution

Fund Administrator and otherwise assist the Distribution Fund Administrator in understanding such documents, records, and information and the distribution of such reports. In addition, Defendant shall provide such other cooperation that the Court may order upon motion by the Distribution Fund Administrator. In performing his duties pursuant to this Final Judgment, the Distribution Fund Administrator shall not make any determination whether any conduct by Defendant violated federal or state securities laws or NASD or NYSE rules or conduct any inquiry for the purpose of making any such determination.

B. Defendant shall take such actions as the Distribution Fund Administrator may require (including, but not limited to, providing any notices to any of Defendant's present or former customers that the Distribution Fund Administrator deems appropriate) to ensure proper implementation of the Distribution Fund Plan.

C. Defendant shall indemnify, defend, and hold harmless the Distribution Fund Administrator, his agents, and his attorneys from and against liabilities, claims, and demands, whether civil, administrative, or investigative, judgments, fines, and amounts paid in settlement, and costs and expenses (including attorneys' fees), arising from or relating to any act or omission to act in the course of performing his duties, except and to the extent that the Court finds that such person acted criminally, or in bad faith, or with gross negligence, or with reckless disregard of his duties, or in a manner that he knew was contrary to the terms of this Final Judgment or any further applicable order of the Court.

VIII.

Financial Obligation Regarding Independent Research

A. As referenced in Section II.A.3 above, Defendant shall pay a total of \$25,000,000 for its Independent Consultant to procure Independent Research from the Independent Research

Providers over the five-year period set forth in Section III.1 of Addendum A hereto. This amount is not contingent or dependent in any way or part upon acceptance by any state securities regulator(s) of the State Settlement Offer. As used herein, the terms “Independent Consultant,” “Independent Research,” and “Independent Research Providers” shall have the meanings set forth in Addendum A hereto. Defendant will not be required to spend more than the amount set forth in this Section VIII.A in order to procure Independent Research and will have no obligation to procure additional Independent Research if the Independent Consultant has spent the entire amount of Defendant’s financial obligation with regard to Independent Research. Any money that is not spent after the five-year period set forth in Section III.1 of Addendum A hereto will not be retained by Defendant and will be paid one-half to NASD and one-half to NYSE for use in their regulation and enforcement programs.

B. Defendant shall also escrow \$1,250,000 within thirty (30) days after entry of this Final Judgment to cover the fees and costs of the Independent Consultant. This obligation is not contingent or dependent in any way or part upon acceptance by any state securities regulator(s) of the State Settlement Offer. In the event that such escrowed amount exceeds the fees and costs of the Independent Consultant, the excess will be returned to Defendant at the conclusion of the five-year period set forth in Section III.1 of Addendum A hereto.

IX.

Investor Education

A. Payments to the Investor Education Fund.

1. As referenced in Section II.A.4 above, Defendant shall pay a total amount of \$5,000,000 to be used for investor education. Defendant shall pay this amount in five equal installments on an annual basis. Of this amount, \$2,500,000 represents the amount Defendant

has offered to pay for investor education in five equal annual installments pursuant to the State Settlement Offer. Defendant shall pay the remaining amount of \$2,500,000 in five equal annual installment payments pursuant to the terms of this Final Judgment and further applicable orders of the Court (the "Federal Investor Education Payments"). Defendant's obligation to make the Federal Investor Education Payments is not contingent or dependent in any way or part on Defendant's investor education payments pursuant to the State Settlement Offer. The amount of Defendant's investor education payments pursuant to the State Settlement Offer (and the total amount of \$5,000,000 payable for investor education under Section II.A) may be reduced due to the decision of any state securities regulator(s) not to accept the State Settlement Offer. In the event a state securities regulator determines not to accept Defendant's State Settlement Offer, the total amount of Defendant's Federal Investor Education Payments shall not be affected, and shall remain at \$2,500,000 to be paid in five equal installments on an annual basis.

2. Defendant shall make the first such installment payment on the ninetieth (90th) day after the entry of this Final Judgment by the Court. This payment shall be made by wire transfer into an interest bearing account with the FRB-NY, to be designated the "UBS Securities LLC Investor Education Fund Account" in accordance with instructions to be provided to Defendant by the FRB-NY and authorized or ordered by the Court. Defendant shall simultaneously transmit proof of its payment to the Court, the Clerk of the Court, and the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant. Any interest and income earned on funds in such Investor Education Fund Account shall be added to and become part of such Account. The Investor Education Fund Account shall be held by the FRB-NY until further order of the Court. At any time after the entry of this

Judgment, the Court may order that any and all funds in the UBS Securities LLC Investor Education Fund Account be transferred from the FRB-NY to such depository account, to be known as the "Investor Education Fund," as the Court may direct. Pending further order of the Court, a fee not more than ten (10) percent of the income earned on the Investor Education Fund Account shall be deducted from such Account as the court registry fee pursuant to 28 U.S.C. § 1914. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The Investor Education Fund Account shall be administered in accordance with the terms of the Investor Education Plan to be approved by this Court as provided for in this Final Judgment and any further applicable orders of the Court.

3. Defendant shall make subsequent installment payments annually on or before the month and day of the entry of this Final Judgment. Such payments shall be made to such account by such means as are specified in a further order of this Court.

B. Purpose and Use of the Investor Education Fund Account.

1. The UBS Securities LLC Investor Education Fund Account and the Investor Education Fund (including all installment payments) shall be used to support programs designed to equip investors with the knowledge and skills necessary to make informed investment decisions, according to the terms of this Final Judgment, the Investor Education Plan referred to below, and any further applicable orders of the Court.

2. The UBS Securities LLC Investor Education Fund Account and the Investor Education Fund shall be used to help establish a tax-exempt, non-profit grant administration organization (the "Investor Education Entity") to fund worthy and cost-efficient programs designed to equip investors with the knowledge and skills necessary to make informed investment decisions. Subject to the Court's approval, there shall be a single Investor Education

Entity and a single Investor Education Fund with respect to this action and the Related Actions. Pending further order of the Court, the Investor Education Fund Account in this action shall be separate from the Investor Education Fund Accounts established in the Related Actions.

C. Stay of Proceedings. For the purposes of implementing and effectuating this Final Judgment, and upon a finding hereby made that a stay of any proceedings against the UBS Securities LLC Investor Education Fund Account, the Investor Education Fund, and the Investor Education Entity during the pendency or the existence of such Fund Account, Fund, and Entity is necessary to effectuate this Final Judgment, all creditors or claimants of Defendant, and other persons acting on behalf of such creditors, claimants, or other persons, including sheriffs, marshals, other officers, deputies, servants, agents, employees, and attorneys, be and the same hereby are restrained and enjoined during the pendency or the existence of the UBS Securities LLC Investor Education Fund Account, the Investor Education Fund, and the Investor Education Entity from: (1) commencing, prosecuting, continuing, or enforcing any suit or proceeding against such Account, Fund, or Entity; (2) using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any monies or property, wheresoever situated, owned by or in the possession of or to be transferred to such Account, Fund, or Entity pursuant to this Final Judgment; and/or (3) doing any act or thing whatsoever to interfere in any manner with the exclusive jurisdiction of this Court over the UBS Securities LLC Investor Education Fund Account, the Investor Education Fund, or the Investor Education Entity.

D. Further Order of the Court. Specific provisions concerning restrictions and limitations on use of the UBS Securities LLC Investor Education Fund Account and the Investor

Education Fund, payment of taxes on interest earned by such Account and Fund, the structure and operations of the Investor Education Entity, an Investor Education Plan, and other matters relating to this Section of this Judgment will be set forth in a further order of the Court.

X.

Standing

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, notwithstanding any rule or provision of law, nothing herein, including in the Addenda hereto, shall be deemed to confer standing or right of intervention upon any persons other than the Commission, Defendant, and the Distribution Fund Administrator.

XI.

Record Retention and Non-Destruction Requirement

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, for a period of five years from the effective date of this Final Judgment or such shorter or longer period as the Court may order, Defendant, its officers, directors, agents, affiliates, servants, employees, attorneys, and those persons in active concert or participation with them, and each of them, are hereby enjoined from destroying, mutilating, concealing, altering, or disposing of (a) any research distributed by Defendant during the relevant period identified in the Complaint; (b) documents sufficient to identify all customers who bought or sold equity securities of the issuers as to which Defendant issued research during the relevant period identified in the Complaint (the "Transactions"), including but not limited to documents sufficient to identify the dates, amounts, and prices of the Transactions; (c) documents sufficient to identify which customers received which research distributed by Defendant during the relevant period identified in the Complaint; (d) order entry information sufficient to identify whether the Transactions were solicited by

Defendant; (e) documents sufficient to identify the publicly-traded companies for which Defendant sought to provide, was engaged to provide, or did provide investment banking services during the relevant period identified in the Complaint; and (f) any and all written (including electronic) communication, including communications to and from customers and intra-firm communications, relating to Defendant's investment banking and equity research operations during the relevant period identified in the Complaint; *provided, however*, that Defendant need not retain duplicate identical copies of public documents filed with the Commission or any other regulatory authority.

XII.

Defendant's Consent Incorporated by Reference

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant's Consent previously filed in this action is incorporated herein with the same force and effect as if fully set forth herein, and Defendant shall comply with all of the undertakings and agreements set forth therein.

XIII.

Attached Undertakings Incorporated by Reference

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant shall comply with the undertakings set forth in Addendum A hereto. Such undertakings and Addendum A are incorporated herein with the same force and effect as if fully set forth herein.

XIV.

Definition of Defendant

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that with respect to all injunctive relief and all future obligations, responsibilities, undertakings, commitments,

limitations, restrictions, events, and conditions, the terms "Defendant" and "Defendant's" as used herein shall include Defendant's successors and assigns (which, for these purposes, shall include a successor or assign to Defendant's investment banking and research operations, and in the case of an affiliate of Defendant, a successor or assign to Defendant's investment banking or research operations).

XV.

Court to Retain Jurisdiction


IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

XVI.

Entry of Judgment Forthwith

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, there being no just cause for delay, the Clerk of the Court shall enter this Judgment forthwith and without further notice.

Dated: New York, New York
Oct 31, 2003


WILLIAM H. PAULEY III
UNITED STATES DISTRICT JUDGE