



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

May 6, 2011

Mr. Kenneth J. Berman  
Debevoise & Plimpton LLP  
555 13th Street N.W.  
Suite 1100E  
Washington, D.C. 20004

Re: SEC v. UBS Financial Services Inc. (P-01118)  
**UBS AG – Waiver Request of Ineligible Issuer Status under Rule 405 of the  
Securities Act**

Dear Mr. Berman:

This is in response to your letter dated May 4, 2011, written on behalf of UBS AG (Company) and its subsidiary UBS Financial Services Inc. (UBSFS) and constituting an application for relief from the Company being considered an “ineligible issuer” under Rule 405(1)(vi) of the Securities Act of 1933 (Securities Act). On May 4, 2011, the Commission filed a civil injunctive complaint (Complaint), in the United States District Court for the District of New Jersey, against UBSFS. The complaint alleges that UBSFS violated Section 15(c) of the Exchange Act of 1934 (Exchange Act). UBSFS filed a consent in which it agreed, without admitting or denying the allegations of the Complaint, to the entry of a Final Judgment against it. Among other things, the Final Judgment as entered on May 6, 2011, provides for a permanent injunction from committing future violations of Section 15(c) of the Exchange Act.

Based on the facts and representations in your letter, and assuming the Company and UBSFS comply with the Final Judgment, the Commission, pursuant to delegated authority has determined that the Company has made a showing of good cause under Rule 405(2) and that the Company will not be considered an ineligible issuer by reason of the entry of the Final Judgment. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted and the effectiveness of such relief is as of the date of the entry of the Final Judgment. Any different facts from those represented or non-compliance with the Final Judgment might require us to reach a different conclusion.

Sincerely,

Mary Kosterlitz  
Chief, Office of Enforcement Liaison  
Division of Corporation Finance

May 4, 2011

**VIA FIRST CLASS MAIL AND E-MAIL**

Mary Kosterlitz, Esq.  
Chief, Office of Enforcement Liaison  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-7553

**Securities and Exchange Commission v. UBS Financial Services Inc.**

Dear Ms. Kosterlitz:

We submit this letter on behalf of UBS AG, a reporting company registered under Section 12 of the Securities Exchange Act of 1934 (the "Exchange Act") and indirect parent company of UBS Financial Services Inc., the settling defendant in the above-captioned civil proceeding, which was filed on May 4, 2011 (the "Settling Firm").

We hereby request a determination by the Division of Corporation Finance, acting pursuant to authority duly delegated by the Securities and Exchange Commission (the "Commission"), that UBS AG should not be an "ineligible issuer" as defined under Rule 405 promulgated under the Securities Act of 1933 (the "Securities Act") as a result of the entry of a Judgment as to Defendant UBS Financial Services Inc. (the "Judgment"), which is described below. Relief from the ineligible issuer provisions is appropriate in the circumstances of this case for the reasons set forth below. It is also our understanding that the Staff of the Division of Enforcement (the "Staff") does not oppose the requested waiver. UBS AG requests that this determination be made effective upon the entry of the Judgment.

**BACKGROUND**

The staff of the Division of Enforcement has engaged in settlement discussions with the Settling Firm in connection with the above-captioned civil proceeding, which

will be brought alleging violations of Section 15(c) of the Exchange Act. As a result of these discussions, the Settling Firm submitted an executed Consent of the Defendant UBS Financial Services Inc. (the "Consent"). In the Consent, solely for the purpose of proceedings brought by or on behalf of the Commission or in which the Commission is a party, the Settling Firm consented to the entry of a final judgment as described below, without admitting or denying allegations made in the above-captioned proceeding.

The allegations in the proceeding relate to the conduct of certain former employees of the Settling Firm 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. Beginning in 2000 and continuing through 2004, the former employees are alleged to have participated in conduct in connection with the competitive bidding for these products that involved the steering of business to the Settling Firm and the submission of purposefully non-winning bids in the Settling Firm's capacity as a reinvestment provider, and the steering of business to other firms in the Settling Firm's capacity as a bidding agent. These practices are alleged to have affected the prices for certain of the reinvestment products at issue and the certifications required under applicable Treasury regulations.

The Judgment, among other things, will restrain and enjoin the Settling Firm and its agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of the Judgment from violating, directly or indirectly, Section 15(c) of the Exchange Act. Additionally, pursuant to the Judgment, the Settling Firm will pay disgorgement and prejudgment interest of \$14,707,180.00 to the Commission as well as a civil penalty of \$32,500,000.00.

UBS AG is not a party to the proceedings.

## DISCUSSION

Effective on December 1, 2005, the Commission reformed and revised the registration, communications, and offering procedures under the Securities Act.<sup>1</sup> As part of these reforms, the Commission created a new category of issuer defined under Rule 405 as a well-known seasoned issuer ("WKSI"). A WKSI is eligible under the new rules, among other things, to register securities for offer and sale under an "automatic shelf registration statement," as so defined. A WKSI is also eligible for the benefits of a streamlined registration process including the use of free-writing prospectuses in registered offerings pursuant to Rules 164 and 433 under the Securities Act. These

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<sup>1</sup> Securities Offering Reform, Securities Act Release No. 8591, Exchange Act Release No. 52,056, Investment Company Act Release No. 26,993, 70 Fed. Reg. 44,722, 44,790 (Aug. 3, 2005).

benefits, however, are unavailable to issuers defined as “ineligible issuers”<sup>2</sup> under Rule 405.

Rule 405 defines “ineligible issuer,” in pertinent part, as any issuer which itself or any of its subsidiaries had within the past three years been “made the subject of any judicial or administrative decree or order arising out of a government action that . . . [p]rohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws.” Notwithstanding the foregoing, paragraph (2) of the definition provides that an issuer “shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.” The Commission has delegated authority to the Division of Corporation Finance to make such a determination pursuant to 17 CFR § 200.30-1(a)(10).

The Judgment might be deemed to render UBS AG an ineligible issuer for a period of three years after the Judgment is entered.<sup>3</sup> This result would preclude UBS AG from qualifying as a WKSI and having the benefits of automatic shelf registration and other provisions of the Securities Offering Reform for three years. This would impose a significant burden on UBS AG. UBS AG is a frequent issuer of registered securities that offers and sells securities under a shelf registration statement in both one-off and ongoing debt and equity transactions. For UBS AG, the shelf registration process provides an important means of access to the U.S. capital markets, which are an essential source of funding for the company’s global operations. Consequently, the ability to avail itself of automatic shelf registration and the other benefits available to a WKSI is very important to UBS AG.

As set forth above, Rule 405 authorizes the Commission to determine for good cause that an issuer shall not be an ineligible issuer, notwithstanding that the issuer or a subsidiary of the issuer becomes subject to an otherwise disqualifying judicial order. UBS AG believes that there is good cause for the Commission to make such a determination here on the following grounds:

1. The conduct addressed in the Judgment does not pertain to activities undertaken by UBS AG, its affiliates, or its subsidiaries in connection with UBS AG’s role as an issuer of securities (or any disclosure related thereto) or any of its filings with

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<sup>2</sup> This request for relief is not intended to be limited solely for the purpose of continuing to qualify as a WKSI, but for all purposes of the definition of “ineligible issuer” under Rule 405 including but not limited to whatever purpose the definition may now or hereafter be used under the federal securities laws, including Commission rules and regulations.

<sup>3</sup> The Settling Firm is a wholly owned subsidiary of UBS Americas Inc. which, in turn, is a wholly owned subsidiary of UBS AG. In addition, UBS AG and UBS Americas Inc. collectively own all of the membership interests of the Settling Firm.

the Commission. The alleged conduct related to the Settling Firm's activities as a reinvestment provider and a bidding agent with respect to municipal derivatives. Furthermore, we note that the conduct occurred over five years ago, the personnel at the Settling Firm who were involved in the violations alleged in the Complaint are no longer employed by the Settling Firm, and the business unit in which the former employees were employed was closed by the Settling Firm in June 2008.

2. UBS AG and its affiliates have strong records of compliance with the securities laws and fully cooperated with the Enforcement Division's inquiry into this matter. In addition, pursuant to the Judgment, the Settling Firm will be subject to injunctive relief and will be required to make disgorgement payments.

3. Designation of UBS AG as an ineligible issuer would be unduly and disproportionately severe, given that the Judgment fully addresses the activity alleged in the Complaint through injunctive and other relief. Loss of, or the possibility of preclusion from, WKSI privileges, and other adverse consequences thereof, would impose an additional penalty beyond what the Judgment requires and is not necessary to achieve its remedial purposes.

In light of the foregoing, subjecting UBS AG to ineligible issuer status is not necessary under the circumstances, either in the public interest or for the protection of investors, and good cause exists for the grant of the requested relief. Accordingly, we respectfully request that the Division of Corporation Finance, acting pursuant to authority duly delegated by the Commission and pursuant to paragraph (2) of the definition of "ineligible issuer" in Rule 405, determines that under the circumstances UBS AG will not be considered an "ineligible issuer" within the meaning of Rule 405 as a result of the Judgment.<sup>4</sup> We further request that this determination be made (i) effective upon entry of the Judgment and (ii) for all purposes of the definition of "ineligible issuer," however it may now or hereafter be used under the federal securities laws and the rules thereunder.

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<sup>4</sup> We note in support of this request that the Division of Corporation Finance, acting pursuant to authority duly delegated by the Commission, has in other instances granted relief under Rule 405 for similar reasons. *See, e.g.*, Waiver Requests of Ineligible Issuer Status under Rule 405 of the Securities Act were granted for: Deutsche Bank Securities, Inc. (Jun. 16, 2009); Royal Bank of Canada (Jun. 11, 2009); UBS Financial Services Inc. (December 23, 2008); Bank of America (May 1, 2008); Morgan Stanley (May 11, 2007); Banc of America Securities LLC (March 14, 2007); Bank of New York (January 9, 2007); and Deutsche Bank, AG (January 9, 2007).

If you have any questions regarding this request, please contact me at (202) 383-8050.

Sincerely yours,

A handwritten signature in black ink, appearing to read "K. J. Berman", written in a cursive style.

Kenneth J. Berman