



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

December 23, 2008

DIVISION OF
CORPORATION FINANCE

Kenneth J. Berman
Debevoise & Plimpton LLP
555 13th Street, N.W.
Washington, DC 20004

Re: In the Matter of Auction Rate Securities Liquidity Issues (File No. HO-10915-A)
**UBS Financial Services, Inc., and UBS Securities LLC- Waiver Request of
Ineligible Issuer Status under Rule 405 of the Securities Act**

Dear Mr. Berman:

This is in response to your letter dated December 9, 2008, written on behalf of UBS AG ("Company") and its subsidiary UBS Americas Inc. ("UBS Americas") and constituting an application for relief from the Company and UBS Americas being considered "ineligible issuers" under Rule 405(1)(vi) of the Securities Act of 1933 ("Securities Act"). The Company and UBS Americas each request relief from being considered an "ineligible issuer" under Rule 405, arising from the settlement of a civil injunctive action with the Commission. On December 11, 2008, the Commission filed a civil injunctive complaint against UBS Securities LLC and UBS Financial Services, Inc. (together the "UBS Subsidiaries") alleging, that the UBS Subsidiaries violated Section 15(c) of the Exchange Act of 1934 ("Exchange Act"). The UBS Subsidiaries filed a consent in which they agreed, without admitting or denying the allegations of the Commission's complaint, to the entry of a Final Judgment against them. The Final Judgment, as entered on December 23, 2008, among other things, permanently enjoins the UBS Subsidiaries from violating Section 15(c) of the Exchange Act.

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

Sincerely,

A handwritten signature in cursive script that reads "Mary Kosterlitz".

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

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December 9, 2008

BY HAND 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 Securities LLC and UBS
Financial Services, Inc. (File No. HO-10915)**

Dear Ms. Kosterlitz:

We submit this letter on behalf of our clients UBS AG, a reporting company registered under Section 12 of the Securities Exchange Act of 1934 (the "Exchange Act") and UBS Americas Inc., a wholly-owned subsidiary of UBS AG ("UBS Americas"), to request a determination by the Division of Corporation Finance, acting pursuant to authority duly delegated by the Securities and Exchange Commission (the "Commission"), that neither UBS AG nor UBS Americas should 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 Defendants UBS Securities LLC and UBS Financial Services, Inc. (the "Judgment"), which is described below.¹ Relief from

¹ UBS Americas has outstanding certain debt obligations that have been registered under the Securities Act. These obligations are guaranteed by UBS AG. While UBS Americas is not currently a "well known seasoned issuer" as defined under defined under Rule 405, it may seek to become one in the future and therefore seeks the requested determination.

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 grant of exemptive relief, including the requested waiver. UBS AG and UBS Americas request that this determination be made effective upon the entry of the Judgment.

BACKGROUND

The Staff has engaged in settlement discussions with UBS Securities LLC and UBS Financial Services, Inc. (each a "UBS Firm" and together the "UBS Firms" or the "Settling Firms") in connection with the above-captioned civil proceedings, which will be brought alleging violations of Section 15(c) of the Exchange Act. As a result of these discussions, the UBS Firms submitted an executed Consent of Defendants UBS Securities LLC and UBS Financial Services, Inc. (the "Consent").

In the Consent, solely for the purpose of the proceedings brought by or on behalf of the Commission or in which the Commission is a party, the UBS Firms agreed to consent to the entry of the Judgment, without admitting or denying the allegations contained in the above-captioned Complaint (other than those relating to personal and subject matter jurisdiction, which are admitted). The Complaint concerns the marketing and sale of auction rate securities ("ARS") by the UBS Firms to investors. The Complaint alleges that the Settling Firms misled tens of thousands of their customers regarding the fundamental nature and increasing risks associated with ARS that the Settling Firms underwrote, marketed and sold. The Complaint further alleges that through their financial advisors, marketing materials, and account statements, the Settling Firms misrepresented to their customers that ARS were safe, highly liquid investments that were equivalent to cash or money-market funds. The Complaint alleges that, as a result, numerous customers invested their savings in the Settling Firms' ARS that they needed to have available on a short-term basis. The Complaint further alleges that (i) on February 13, 2008, the Settling Firms determined that they would not continue to support auctions, as they had historically done, and that they would let their auctions fail and (ii) as a direct result of auction failures, over 40,000 UBS Firms' accounts holding more than \$35 billion in ARS had their investments rendered virtually illiquid overnight and, because of the illiquidity, many customers incurred mark to market losses on the par value of their ARS investments held at the Settling Firms. The Complaint alleges that the UBS Firms violated Section 15(c) of the Exchange Act.

The Judgment, among other things, will permanently restrain and enjoin the UBS Firms 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 UBS Firms shall establish a plan to restore multiple billions of dollars in liquidity to their customers holding ARS.

UBS AG and UBS Americas are not parties to the proceedings.

DISCUSSION

Effective on December 1, 2005, the Commission reformed and revised the registration, communications, and offering procedures under the Securities Act.² 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 benefits, however, are unavailable to issuers defined as "ineligible issuers"³ 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).

² 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).

³ 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.

The Judgment might be deemed to render UBS AG an ineligible issuer for a period of three years after the Judgment is entered.⁴ This result would preclude UBS AG from qualifying as a WKSI and having the benefits of automatic shelf registration and other provisions 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. UBS Americas may seek the benefits of being a WKSI in the future and seeks the requested determination for similar reasons.

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. Designation of UBS AG as an ineligible issuer is not warranted given the nature of the violations that are the basis of the Complaint. The alleged conduct related to the marketing and sale of ARS issued by third party issuers to the UBS Firms' customers. The Complaint does not challenge the disclosures by UBS AG in its filings with the Commission, nor does it involve allegations of fraudulent activity by UBS AG.

2. UBS AG and the UBS Firms 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 UBS Firms shall establish a plan to restore multiple billions of dollars in liquidity to their customers.

3. Designation of UBS AG as an ineligible issuer would be unduly and disproportionately severe. The Judgment shall require the UBS Firms, among other things, to establish a plan to restore liquidity to their customers who invested in ARS by offering to buy back billions of dollars of ARS. The UBS Firms shall also make whole any losses sustained by certain customers who sold ARS after February 13, 2008. In addition, until the UBS Firms provide par solutions to clients pursuant to the Judgment,

⁴ UBS Financial Services is a wholly-owned subsidiary of UBS Americas which, in turn, is a wholly owned subsidiary of UBS AG. In addition, UBS AG and UBS Americas collectively own all of the membership interests of UBS Securities.

the UBS Firms shall provide customers needing liquidity no-net-cost loans that will remain outstanding until the ARS are repurchased. 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.

These concerns are also applicable to UBS Americas which may become an ineligible issuer as a result of the Judgment in the future.⁵ In light of the foregoing, subjecting UBS AG or UBS Americas 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, determine that under the circumstances neither UBS AG nor UBS Americas will be considered an "ineligible issuer" within the meaning of Rule 405 as a result of the Judgment.⁶ 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.

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

Sincerely yours,



Kenneth J. Berman

⁵ Please see discussion in footnote 1

⁶ 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: 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).