



### III.

The Commission finds the following:

#### A. SUMMARY

UBS, a registered commodity pool operator (“CPO”), claimed for certain commodity pools exemptions from recordkeeping, disclosure and reporting requirements under Regulation 4.7(b). Pursuant to Regulation 4.7(b)(3)(i), UBS was required to file with the National Futures Association (“NFA”) and distribute to each pool participant an annual report for each of the pools subject to this exemption, within 90 days of the end of the relevant pool’s fiscal year.

UBS failed to distribute to pool participants and file with the NFA one or more of its commodity pools’ annual reports in a timely manner, in violation of Regulation 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i)(2008).

#### B. RESPONDENT

**UBS Fund Advisor, LLC** is located at 51 West 52<sup>nd</sup> Street, 23<sup>rd</sup> Floor, New York, NY 10019. UBS has been registered with the Commission as a CPO since September 1996.

#### C. FACTS

UBS is a CPO for pools that operate as “fund-of-funds” (i.e., a pool that invests in one or more other collective investment vehicles). For the years ending December 31, 2004 through December 31, 2006, UBS’s commodity pools’ fiscal years ended on December 31<sup>st</sup>. Pursuant to Regulation 4.7(b), UBS claimed for its pools exemption from recordkeeping, disclosure and reporting requirements under the Regulations. Accordingly, under Regulation 4.7(b)(3)(i), UBS was required to distribute and file annual reports for all its pools subject to this exemption within 90 days of the end of its fiscal year on December 31<sup>st</sup>.

For fiscal years 2004 through 2006, UBS failed to file with NFA one or more of its commodity pools’ annual reports in a timely manner.<sup>2</sup>

#### D. LEGAL DISCUSSION

Section 4n(3) of the Act, 7 U.S.C. § 6n(3) (2006), provides, in relevant part, that every CPO registered with the Commission shall file such reports in such form and manner as may be prescribed by the Commission. Regulation 4.22(c), in relevant part, requires a CPO to file with the NFA annual reports for its commodity pools within 90

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<sup>2</sup> The Commission recognizes that UBS corrected its failure to file timely annual reports by notifying the NFA and Commission and filing the required reports. The Commission also notes that for fiscal years 2004 through 2006, UBS provided each of its pools’ participants with annual reports.

days of the end of the pools' fiscal year and containing the information required by and in accordance with Regulations 4.22(c) and (d).

Pursuant to Regulation 4.7(b)(3), a CPO may claim relief from the reporting requirements of Regulation 4.22(c) for certain pools where the CPO offers or sells participations in the pools solely to qualified eligible persons (as defined in Regulation 4.7), in an offering that is exempt from registration under the federal securities laws and the offering is not marketed to the public. However, a CPO claiming such exemption must, within 90 days after the end of the exempt pools' fiscal year, electronically file with the NFA and distribute to each pool participant an annual report that contains, at a minimum, certain financial information that is in lieu of the information required by Regulation 4.22(c) and (d). Regulation 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i) (2008).

As described above, for fiscal years 2004 through 2006, UBS failed to file with NFA one or more of its commodity pools' annual reports in a timely manner. UBS, therefore, violated Regulation 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i) (2008).

The furnishing of the annual report is designed to "provide [pool] participants with the information necessary to assess the overall trading performance and financial condition of the pool." Commodity Pool Operators and Commodity Trading Advisors; Final Rules, 44 Fed. Reg. 1918 (Jan. 8, 1979) (announcing the adoption of Regulation 4.22). Without timely reporting, the Commission's goal of providing pool participants with complete and necessary data is hampered.

#### IV.

### FINDING OF VIOLATIONS

Based on the foregoing, the Commission finds that UBS violated Regulation 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i) (2008).

#### V.

### OFFER OF SETTLEMENT

UBS has submitted the *Offer* in which it, without admitting or denying the findings herein:

- A. Acknowledges receipt and service of the *Order*;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in the *Order*;
- C. Waives: the filing and service of a complaint and notice of hearing; a hearing; all post-hearing procedures; judicial review by any court; any and all objections to the participation by any member of the Commission's staff in consideration of the *Offer*; any and all claims that it may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000) and Part 148 of the Regulations, 17 C.F.R. §§ 148.1, *et seq.*, (2008) relating to, or arising from,

this proceeding; any and all claims that it may possess under the Small Business Regulatory Enforcement Act, Pub. L. 104-121, Subtitle B, Section 223, 110 Stat. 862-63 (March 29, 1996), relating to or arising from this proceeding; and any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;

- D. Stipulates that the record upon which this *Order* is entered shall consist solely of the Offer and the findings contained in this *Order* to which UBS has consented; and
- E. Consents, solely on the basis of the *Offer*, to entry of this *Order* that:
1. makes findings by the Commission that UBS violated Regulation 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i) (2008);
  2. orders UBS and its successors and assigns to cease and desist from violating Regulation 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i) (2008);
  3. orders UBS to pay a civil monetary penalty in the amount of fifty thousand dollars (\$50,000.00) within ten (10) days of the date of the entry of this *Order*; and
  4. orders UBS and its successors and assigns to each comply with its undertaking consented to in its *Offer* and set forth below in Part VI of this *Order*.

Upon consideration, the Commission has determined to accept UBS's *Offer*.

## VI.

### ORDER

#### **Accordingly, IT IS HEREBY ORDERED THAT:**

A. UBS and its successors and assigns shall cease and desist from violating Regulation 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i) (2008);

B. UBS shall pay a civil monetary penalty in the amount of fifty thousand dollars (\$50,000.00) within ten (10) days of the date of entry of this *Order*. UBS shall pay its civil monetary penalty by making electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made by other than electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Marie Bateman – AMZ-300

DOT/FAA/MMAC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
Telephone 405-954-6569

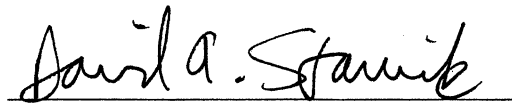
If payment by electronic transfer is chosen, UBS shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. UBS shall accompany payment of the penalty with a cover letter that identifies UBS and the name and docket number of this proceeding. UBS shall simultaneously transmit copies of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581; and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, at the same address. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. §9a(2)(2006), if this amount is not paid in full within fifteen (15) days of the due date, UBS shall be prohibited automatically from the privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until it has shown to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date of the payment has been made; and

C. UBS and its successors and assigns shall comply with the following undertaking set forth in its *Offer*:

Public Statements: Neither UBS nor any of its successors, assigns, employees, agents, or representatives shall take any action or make any public statement denying, directly or indirectly, any finding in the *Order*, or creating, or tending to create, the impression that the *Order* is without a factual basis; provided, however, that nothing in this provision shall affect UBS's (i) testimonial obligations; or (ii) right to take appropriate legal positions in other proceedings to which the Commission is not a party. UBS and its successors and assigns shall undertake all steps necessary to ensure that all of their employees, agents and representatives under their authority and/or actual or constructive control understand and comply with this undertaking.

**The provisions of the Order shall be effective as of this date.**

By the Commission.



David A. Stawick  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: January 8, 2009