UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION, **100 F Street, N.E.** **Washington, D.C. 20549** **Plaintiff,** **v.** **UBS AG,** **Defendant.**	Civil Action No. Case: 1:09-cv-00316 Assigned To : Robertson, James Assign. Date : 2/18/2009 Description: General Civil

COMPLAINT

Plaintiff, Securities and Exchange Commission ("Commission") alleges as follows:

SUMMARY

1. From at least 1999 through 2008, defendant UBS AG ("UBS") acted as an unregistered broker-dealer and investment adviser to thousands of United States cross-border clients to facilitate the ability of those clients to maintain undisclosed accounts in Switzerland and other locations outside of the United States, which enabled those clients to avoid paying taxes related to those accounts. UBS used United States jurisdictional means to engage in a cross-border business of soliciting, establishing, and maintaining brokerage accounts; executing securities transactions; and providing investment advice for its United States cross-border clients. At all times, UBS was aware that it could provide these services to United States cross-border clients only through an entity registered with the Commission as a broker-dealer or investment adviser. UBS was not

so registered with the Commission. From 2001 through 2008, as a result of its provision of unregistered broker-dealer and investment advisory services to United States cross-border clients, UBS had ill-gotten gains of at least $380 million.

2. By acting as an unregistered broker-dealer and investment adviser, UBS violated Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78o(a)] and Section 203(a) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §80b-3(a)]. The Commission, accordingly, seeks a final judgment that (a) permanently enjoins UBS from violating Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)] and Section 203(a) of the Advisers Act [15 U.S.C. §80b-3(a)], (b) orders UBS to disgorge the ill-gotten gains that it received from its United States cross-border business, and (c) grants such other relief as the Court deems appropriate.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to Sections 21(d)(1) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)(1) and 78aa] and Sections 209(d) and 214 of the Advisers Act [15 U.S.C. §§80b-9(d) and 80b-14]. Defendant UBS, directly or indirectly, made use of the mails or the means and instrumentalities of interstate commerce in connection with the acts, practices, and courses of business alleged in this Complaint.

4. Venue in this Court is proper under Section 27 of the Exchange Act [15 U.S.C. § 78aa] and Section 209(d) of the Advisers Act [15 U.S.C. §80b-9(d)].

DEFENDANT

5. Defendant UBS is a corporation organized under the laws of Switzerland with its headquarters located in Zurich and Basel, Switzerland. UBS, directly and through its subsidiaries, operates a global financial services business. Certain of UBS's

securities are listed on the New York Stock Exchange. UBS has certain subsidiaries that are registered with the Commission under the Exchange Act and the Advisers Act.

FACTS

6. Beginning no later than 1999, UBS operated a cross-border business through which it provided brokerage and investment advisory services to certain United States persons and offshore entities with United States citizens as beneficial owners ("United States cross-border clients") who maintained accounts at UBS in Switzerland and other locations outside of the United States. UBS provided the brokerage and investment advisory services largely through individuals known as clients advisers. At all relevant times, UBS held billions of dollars of assets for these United States cross-border clients.

7. These cross-border brokerage and investment advisory services that UBS provided required registration with the Commission pursuant to the Exchange Act and the Advisers Act. UBS, however, was not so registered with the Commission as a broker-dealer or investment adviser, and the client advisers servicing the United States cross-border clients were not associated with a registered broker-dealer or investment adviser. The Exchange Act and the Advisers Act restricted the activities that UBS (and the client advisers engaged in the United States cross-border business), absent registration, could engage in with such United States cross-border clients either while in the United States or by using United States jurisdictional means such as telephones, facsimiles, mail or e-mail, including the provision of investment advice and the soliciting of securities orders. At all relevant times, UBS was aware that the brokerage and advisory services it provided through its cross-border business to United States clients required that UBS register.

8. UBS operated its cross-border business with United States clients in part by having client advisers travel to the United States to meet with existing and prospective clients. The United States cross-border business was serviced primarily from service desks located in Zurich, Geneva, and Lugano, Switzerland which, during 2001 through 2007, employed approximately 45 to 60 Swiss-based client advisers who specialized in servicing United States cross-border clients. These client advisers traveled to the United States, on average, two to three times per year on trips that generally varied in duration from one to three weeks, during which the client advisers generally tried to meet with three to five clients per day. In many instances, client advisers attended exclusive events such as art shows, yachting events, and sporting events in the United States, often sponsored by UBS, for the purpose of soliciting and communicating with United States clients. When meeting with United States cross-border clients, the client advisers provided account information; marketing materials; recommendations as to the types of accounts that would be most appropriate for their clients; advice as to the merits of the various types of investments, including managed accounts; and on certain occasions, accepted and transmitted orders for securities transactions.

9. UBS also provided these services to United States cross-border clients by having the client advisers use other United States jurisdictional means such as telephones, facsimiles, mail, and e-mail.

10. As a result of providing its brokerage and investment advisory services, UBS received transaction-based and other compensation from its United States cross-border clients.

11. Because UBS provided these brokerage and investment advisory services without registering as a broker-dealer or investment adviser, the accounts that UBS maintained for United States cross-border clients were not subject to record-keeping, examination, and other requirements of the Exchange Act and the Advisers Act. Thus, the accounts, the beneficial owners of the accounts, and the activity in the accounts were undisclosed to United States regulators, which enabled those United States cross-border clients with undisclosed accounts to avoid the payment of taxes related to the assets in those accounts.

12. During the relevant period, UBS's United States cross-border business provided unregistered securities-related and investment advisory services to accounts of at least 11,000 to 14,000 United States cross-border clients. The United States cross-border business generated approximately $120 to $140 million in annual revenues for UBS.

13. Effective January 1, 2001, UBS entered into what was known as a Qualified Intermediary Agreement ("QI Agreement") with the Internal Revenue Service ("IRS"). The Qualified Intermediary regime imposed certain backup withholding and information reporting requirements on foreign financial institutions. As part of the process of implementing the QI Agreement, UBS, as a foreign financial institution, was required to ensure that its United States cross-border clients that were holding United States securities either disclosed their accounts to the IRS or disposed of their United States securities. As a result of its decision to enter into the QI Agreement, UBS had a heightened sensitivity to its exposure to the federal securities laws.

14. Because it wanted to continue to allow United States cross-border clients who wished to do so to maintain undisclosed accounts, UBS, through the use of United States jurisdictional means, sought authorization by United States cross-border clients to sell United States securities in their accounts even though UBS was aware that solicitation of securities transactions required registration under the federal securities laws. Prior to January 1, 2001, UBS effected sales of approximately $530 million of United States securities held by United States clients. UBS also continued to provide unregistered securities-related services with respect to foreign securities to United States cross-border clients.

15. UBS also advised United States cross-border clients to establish managed accounts under which foreign-based UBS portfolio managers would make virtually all investment decisions for the clients. UBS believed the maintenance of managed accounts would enable UBS to reduce the improper use of United States jurisdictional means. Managed accounts also were more profitable to UBS than were standard securities accounts. Ultimately, however, a significant percentage of United States cross-border clients were unwilling to establish managed accounts.

16. UBS, through its client advisers, used a variety of United States jurisdictional means to communicate with United States cross-border clients about their United States and foreign securities and about establishing managed accounts.

17. UBS took action to conceal its use of United States jurisdictional means to maintain its cross-border business with United States cross-border clients. Among other things, client advisers typically traveled to the United States with encrypted laptop computers and received training on how to avoid detection by United States authorities of

the client advisers' activities in the United States. UBS client advisers used the encrypted computers to provide account-related information to United States cross-border clients, to show marketing materials for securities products to those clients, and occasionally to communicate orders for securities transactions to UBS in Switzerland.

18. During the relevant time, UBS adopted written policies and provided training that purported to address the limits on the activities in which UBS client advisers could engage in servicing United States cross-border clients. UBS, however, did not have a meaningful method of monitoring for compliance with those limits. As a result, client advisers and their managers came to believe that a certain degree of non-compliance with UBS policy was acceptable in connection with operating the United States cross-border business. UBS was aware that client advisers continued to travel to the United States and to use other United States jurisdictional means to provide brokerage and investment advisory services to United States cross-border clients.

19. In a series of communications starting in 2005, while he was still employed at UBS, and culminating in a March 2006 whistleblower letter to UBS following his departure, a former Geneva-based UBS client adviser alleged that the actual practices of UBS client advisers ran contrary to an internal legal document posted on UBS's intranet that outlined what business practices were prohibited and further alleged that the actual practices were actively encouraged by managers in the United States cross-border business. UBS conducted a limited internal investigation of the United States cross-border business that found only "isolated instances" of non-compliance. The communications served again to highlight for UBS the legal challenges posed by the continuing operation of the United States cross-border business.

20. In February 2006, UBS undertook a review of measures that could improve the compliance in UBS's United States cross-border business with United States laws, including the federal securities laws. In the course of the review, UBS examined the impact that those measures would have on its United States cross-border business. Only those measures that were classified as having "No/little business impact" or "Some reduction in business" were adopted by UBS, whereas those measures that were classified as resulting in a "Virtual/real exit" from the United States cross-border business were not adopted at that time.

21. Beginning no later than April 2006, and continuing until August 2007, UBS conducted a review of strategic options for the United States cross-border business in light of the continued focus by UBS on the compliance risks faced by that business. The review identified various options for the United States cross-border business, including winding down, selling, or spinning off the business. Throughout the entire period of this review, UBS continued to use United States jurisdictional means to provide the unregistered brokerage and investment advisory services to United States cross-border clients.

22. In August 2007, UBS determined to seek a gradual elimination of the United States cross-border business, as opposed to ending the business immediately. In the fall of 2007, after initial contacts by the Department of Justice concerning UBS's cross-border business, UBS took steps to begin implementing its August 2007 decision to wind down the United States cross-border business, including by imposing a ban on client adviser travel to the United States and limiting new securities account openings for United States clients to UBS's registered entities. As late as November 2007, UBS

allowed certain client advisers to travel to the United States to meet with United States cross-border clients.

23. On July 17, 2008, in the course of a hearing by the United States Senate Permanent Subcommittee on Investigations, UBS announced that it would cease providing securities services to United States cross-border clients.

24. As a result of its provision of unregistered broker-dealer and investment advisory services to United States cross-border clients, as described above, UBS had ill-gotten gains of at least $380 million.

CLAIM ONE

Violation of Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)]

25. Paragraphs 1 through 24 of this Complaint are hereby restated and incorporated herein by reference.

26. Defendant UBS acted as a broker-dealer within the meaning of Sections 3(a)(4) and 3(a)(5) of the Exchange Act [15 U.S.C. §§78c(a)(4) and 78c(a)(5)] and, directly or indirectly, made use of the mails or means or instrumentality of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, securities (other than an exempted security or commercial paper, bankers' acceptances or commercial bills) without being registered with the Commission in accordance with Section 15(b) of the Exchange Act [15 U.S.C. §78o(b)].

27. As set forth more fully above, Defendant UBS, while acting as an unregistered broker-dealer, among other things, solicited, established, and maintained brokerage accounts for United States cross-border clients; provided account information; executed securities transactions; and received transaction-based compensation.

28. By reason of the foregoing, Defendant UBS violated Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)].

CLAIM TWO

Violation of Section 203(a) of the Advisers Act [15 U.S.C. §80b-3(a)]

29. Paragraphs 1 through 24 of this Complaint are hereby restated and incorporated herein by reference.

30. Defendant UBS acted as an investment adviser within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. §80b-2(a)(11)] and, directly or indirectly, made use of the mails or means or instrumentality of interstate commerce in connection with its business as an investment adviser without being registered and without the applicability of Section 203(b) of the Advisers Act [15 U.S.C. §80b-3(b)] or Section 203A of the Advisers Act [15 U.S.C. §80b-3a].

31. As set forth more fully above, UBS, while acting as an unregistered investment adviser for compensation, solicited managed accounts; provided investment advice; and managed greater than $25 million in assets for United States cross-border clients.

32. By reason of the foregoing, defendant UBS violated Section 203(a) of the Advisers Act [15 U.S.C. §80b-3(a)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment

A. Permanently enjoining Defendant UBS from violating Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)] and Section 203(a) of the Advisers Act [15 U.S.C. §80b-3(a)];

B. Ordering Defendant UBS to disgorge the ill-gotten gains that it received from the business of acting as an unregistered broker-dealer and investment adviser as described in this Complaint; and

C. Granting such other relief as the Court deems appropriate.

Respectfully submitted,

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