

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC - 28652; 812-13645]

UBS AG, et al.; Notice of Application and Temporary Order

March 19, 2009

Agency: Securities and Exchange Commission (“Commission”).

Action: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (“Act”).

Summary of Application: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against UBS AG on March 19, 2009 by the United States District Court for the District of Columbia (“Injunction”) until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

Applicants: UBS AG; UBS Financial Services Inc. (“UBSFS”); UBS Fund Advisor, L.L.C. (“UBSFA”); UBS Willow Management, L.L.C. (“UBS Willow”), UBS Eucalyptus Management, L.L.C., UBS Tamarack Management, L.L.C., UBS Juniper Management, L.L.C., and UBS Enso Management, L.L.C. (collectively, “UBSFA Advisers”); UBS Global Asset Management (Americas) Inc. (“UBS Global AM Americas”); UBS Global Asset Management (US) Inc. (“UBS Global AM US”); and UBS IB Co-Investment 2001 GP Limited (“ESC GP”) (collectively, “Applicants”).¹

Filing Dates: The application was filed on March 19, 2009. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

¹ Applicants request that any relief granted pursuant to the application also apply to any other company of which UBS AG is or may become an affiliated person (together with the Applicants, the “Covered Persons”).

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 13, 2009, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

Addresses: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; Applicants: UBS AG and ESC GP, c/o UBS Investment Bank, 677 Washington Boulevard, Stamford, CT 06901; UBSFS, 1200 Harbor Boulevard, Weehawken, NJ 07086; UBSFA and UBSFA Advisers, 51 West 52nd Street, 23rd Floor, New York, NY 10019; UBS Global AM US, 51 West 52nd Street, 16th Floor, New York, NY 10019; UBS Global AM Americas, One North Wacker Drive, Chicago, IL 60606.

For Further Information Contact: John Yoder, Senior Counsel, at 202-551-6878, or Marilyn Mann, Branch Chief, at 202-551-6821 (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: The following is a temporary order and summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street NE, Washington DC 20549-1520 (tel. 202-551-5850).

Applicants' Representations:

1. UBS AG is a company established under the laws of Switzerland that directly or through its subsidiaries provides global wealth management, securities and retail and commercial

banking services. Each of the Applicants is either directly or indirectly controlled by UBS AG. UBS AG and ESC GP provide investment advisory services to employees' securities companies ("ESCs"), as defined in section 2(a)(13) of the Act, which provide investment opportunities for highly compensated key employees, officers, directors and current consultants of UBS AG and its affiliates. UBSFS, UBSFA, UBSFA Advisers and UBS Global AM Americas are registered as investment advisers under the Investment Advisers Act of 1940 ("Advisers Act") and currently serve as investment advisers to registered management investment companies ("Funds"). UBSFS is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") and acts as depositor and principal underwriter to various registered unit investment trusts ("UITs"). UBS Global AM US is registered as a broker-dealer under the Exchange Act and as an investment adviser under the Advisers Act and serves as principal underwriter to various open-end Funds.

2. On March 19, 2009, the United States District Court for the District of Columbia entered a judgment, which included the Injunction, against UBS AG ("Judgment") in a matter brought by the Commission.² The Commission alleged in the complaint ("Complaint") that UBS AG violated section 15(a) of the Exchange Act and section 203(a) of the Advisers Act by acting as an unregistered broker-dealer and investment adviser. The Complaint alleged that UBS AG, largely through individuals known as client advisers, used United States jurisdictional means to provide cross-border brokerage and investment advisory services to thousands of United States clients. The Complaint further alleged that this cross-border business was serviced primarily from Switzerland. The Complaint further alleged that at all times UBS AG was aware that it could provide these services to United States cross-border clients only through an entity

² Securities and Exchange Commission v. UBS AG, Judgment as to UBS AG, 1:09-CV-00316 (D.D.C.) (entered March 19, 2009).

registered with the Commission as a broker-dealer or investment adviser. Without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, UBS AG consented to the entry of the Injunction, the payment of disgorgement and certain undertakings to take various remedial actions.

Applicants' Legal Analysis:

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security, or in connection with activities as an underwriter, broker or dealer, from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust, or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include, among others, any person directly or indirectly controlling, controlled by, or under common control, with the other person. Applicants state that UBS AG is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3). Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) of the Act if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the conduct of the Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to

section 9(c) seeking a temporary and permanent order exempting the Applicants and the other Covered Persons from the disqualification provisions of section 9(a).

3. Applicants believe that they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the requested exemption from section 9(a).

4. Applicants state that the alleged conduct giving rise to the Injunction did not involve any of the Applicants acting in the capacity of investment adviser, sub-adviser or depositor to any registered investment company or ESC, or in the capacity of principal underwriter for any open-end Fund or UIT (“Fund Service Activities”). Applicants note that none of the current or former directors, officers, or employees of the Applicants (other than UBS AG) had any knowledge of, or had any involvement in, the conduct alleged in the Complaint. Applicants further state that the personnel at UBS AG who were involved in the violations alleged in the Complaint have had no and will not have any future involvement in Fund Service Activities.

5. Applicants state that the inability of the Applicants to engage in Fund Service Activities would result in potentially severe financial hardships for the registered investment companies they serve and the registered investment companies’ shareholders or unitholders. Applicants state that they will distribute written materials, including an offer to meet in person to discuss the materials, to the boards of directors of the Funds (the “Boards”), including the directors who are not “interested persons,” as defined in section 2(a)(19) of the Act, of the Funds, and their independent legal counsel as defined in rule 0-1(a)(6) under the Act, if any,

regarding the Injunction, any impact on the Funds, and the application. Applicants state that they will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also state that, if they were barred from providing Fund Service Activities to registered investment companies and ESCs, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establishing an expertise in providing Fund Service Activities. Applicants further state that prohibiting them from providing Fund Service Activities would not only adversely affect their businesses, but would also adversely affect over 425 employees that are involved in those activities. Applicants also state that disqualifying UBS AG and ESC GP from continuing to provide investment advisory services to ESCs is not in the public interest or in furtherance of the protection of investors. Because the ESCs have been formed for the benefit of key employees, officers, directors and current consultants of UBS AG and its affiliates, it would not be consistent with the purposes of the ESC provisions of the Act to require another entity not affiliated with UBS AG to manage the ESCs. In addition, participants in the ESCs have subscribed for interests in the ESCs with the expectation that the ESCs would be managed by an affiliate of UBS AG.

7. Applicants state that UBS AG and certain other Applicants have previously received orders under section 9(c), as described in greater detail in the application.

Applicants' Condition:

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order:

The Commission has considered the matter and finds that the Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

IT IS HEREBY ORDERED, pursuant to section 9(c) of the Act, that Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from March 19, 2009, until the Commission takes final action on their application for a permanent order.

By the Commission.

Elizabeth M. Murphy
Secretary