

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT of 1933
Release No. 9019 / March 20, 2009

In the Matter of

UBS AG,

Defendant.

**ORDER UNDER RULE 602(e) UNDER THE
SECURITIES ACT OF 1933 GRANTING A
WAIVER OF THE RULE 602(b)(4) and
602(c)(2) DISQUALIFICATION PROVISIONS**

I.

UBS AG (“UBS”) has submitted a letter, dated February 18, 2009, requesting a waiver of the Rule 602(b)(4) and 602(c)(2) disqualifications from the exemption from registration under Regulation E arising from UBS’ settlement of an injunctive action commenced by the Commission.

II.

On February 18, 2009, the Commission filed a civil injunctive action in the United States District Court for the District of Columbia charging UBS, a provider of financial services, with violating Section 15(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(a) of the Investment Advisers Act of 1940 (“Advisers Act”). In its complaint, the Commission alleged that between 2001 and 2007, UBS had as many as 20,000 accounts held by wealthy U.S. clients whom UBS solicited and for whom UBS provided broker-dealer and investment advisory services. UBS’ cross-border business was highly profitable, bringing UBS approximately \$150 to 200 million in revenues per year. Although UBS knew that providing these services required it to register with the Securities and Exchange Commission, it did not register and instead took steps to avoid detection by the U.S. authorities. By providing the broker-dealer and investment advisory services without registering with the Commission, UBS was able to evade the Commission’s oversight and record-keeping requirements, thus enabling its U.S. clients to maintain secret accounts and thereby avoid paying U.S. taxes on the income in those accounts. On March 19, 2009, pursuant to UBS’ consent, the Court entered a Final Judgment permanently enjoining UBS from violating Section 15(a) of the Exchange Act and Section 203(a) of the Advisers Act and ordering UBS to: 1) disgorge \$200 million, approximately the amount of the revenues that it received from the business of acting as an unregistered broker-dealer and investment adviser; 2) terminate the

business that gave rise to the violations; and 3) retain and pay for an independent auditor to audit and to report on UBS' termination of that business.

III.

The Regulation E exemption is unavailable for the securities of small business investment company issuers or business development company issuers if the issuer or any of its affiliates is subject to any order, judgment, or decree of a court "temporarily or permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security." *See* Rule 602(b)(4) under the Securities Act of 1933 ("Securities Act"). The Regulation E exemption is also not available for the securities of an issuer if a director, officer, principal security holder, investment adviser or underwriter of the securities to be offered, or any partner, director or officer of such investment adviser or underwriter, is temporarily or permanently restrained or enjoined by any court from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer or investment adviser. *See* Rule 602(c)(2). Rule 602(e) provides, however, that the disqualification "shall not apply . . . if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied."

IV.

Based upon the representations set forth in UBS' request, the Commission has determined that pursuant to Rule 602(e) under the Securities Act a showing of good cause has been made that it is not necessary under the circumstances that the exemption be denied as a result of the Final Judgment.

Accordingly, **IT IS ORDERED**, pursuant to Rule 602(e) under the Securities Act, that a waiver from the application of the disqualification provisions of Rule 602(b)(4) and 602(c)(2) under the Securities Act resulting from the entry of the Final Judgment is hereby granted.

By the Commission.

Elizabeth M. Murphy
Secretary