



DIVISION OF
CORPORATION FINANCE

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

December 23, 2008

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

**Re: SEC v. UBS Securities LLC *et al.*, Civil Action No. 1:08-cv-10754—Waiver
Request under Regulation A and Rule 505 of Regulation D**

Dear Mr. Berman:

This responds to your letter dated December 23, 2008, written on behalf of UBS Securities LLC and UBS Financial Services, Inc. (together, the “Defendants”), and constituting an application for relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D under the Securities Act of 1933. You requested relief from disqualifications from exemptions available under Regulation A and Rule 505 that may be applicable to the Defendants as a result of the entry of a Judgment on December 23, 2008 by the United States District Court for the Southern District of New York in *SEC v. UBS Securities LLC and UBS Financial Services, Inc.*, Civil Action No. 1:08-cv-10754 (the “Judgment”). The Judgment permanently restrains and enjoins the Defendants and their 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 Securities Exchange Act of 1934. Under the Consent of the Defendants that was incorporated by reference into the Judgment, which is available at <http://www.sec.gov/news/press/2008/2008-290-ubsconsent.pdf>, the Defendants were ordered to comply with the following undertakings, among others:

- The Defendants will offer to purchase eligible auction rate securities (“ARS”) at par from eligible current or former customers who purchased those ARS through the Defendants.
- The Defendants will make offers to different categories of eligible customers during different offer periods based among other factors, the dollar amount of assets held by the eligible entities or customers and when the customers became eligible under the Consent.

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- For a certain time period, the Defendants will provide monthly reports to the SEC and meet quarterly with the SEC staff regarding their progress with respect to its obligations under the Consent.
- The Defendants will not liquidate their own inventory of a particular ARS without making that liquidity opportunity available, as soon as practicable, to eligible customers.
- The Defendants will pay eligible customers who sold their ARS below par the difference between par and the sale price of the ARS.
- The Defendants will reimburse customers for any excess interest costs incurred by using the Defendants' ARS loan programs.

For purposes of this letter, we have assumed as facts the representations set forth in your letter and the findings supporting entry of the Judgment. We also have assumed that the Defendants will comply with the Judgment.

On the basis of your letter, I have determined that you have made showings of good cause under Rule 262 and Rule 505 that it is not necessary under the circumstances to deny the exemptions available under Regulation A and Rule 505 by reason of entry of the Judgment. Accordingly, pursuant to delegated authority, and without necessarily agreeing that any such disqualifications arose by reason of entry of the Judgment, the Defendants are granted relief from any disqualifications from exemptions otherwise available under Regulation A and Rule 505.

Very truly yours,



Gerald J. Laporte
Chief, Office of Small Business Policy

December 23, 2008

BY HAND AND VIA E-MAIL

Gerald J. Laporte, Esq.
Chief, Office of Small Business Policy
Division of Corporate Finance
U.S. Securities and Exchange Commission
100 F Street, N.E., 3rd Floor
Washington, D.C. 20549-3628

**Securities and Exchange Commission v. UBS Securities LLC
and UBS Financial Services, Inc.**

Dear Mr. Laporte:

We submit this letter on behalf of our clients, UBS Securities LLC and UBS Financial Services, Inc. (each a "UBS Firm" and together the "UBS Firms"), the settling defendants in the above-captioned civil proceeding, which was filed on December 11, 2008. The UBS Firms hereby request, pursuant to Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D of the Securities and Exchange Commission (the "Commission") promulgated under the Securities Act of 1933 (the "Securities Act"), waivers of any disqualifications from exemptions under Regulation A and Rule 505 of Regulation D that may be applicable to the UBS Firms or any of their affiliates 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. The Judgment was issued on December 23, 2008.¹ The UBS Firms request that these waivers be granted effective as of the date of the Judgment. It is our understanding that the Staff of the Division of

¹ *Securities and Exchange Commission v. UBS Securities LLC and UBS Financial Services, Inc.*, Judgment as to Defendants UBS Securities LLC and UBS Financial Services, Inc., Civil Action No. 1:08-cv-10754 (Dec. 23, 2008).

Enforcement (the "Staff") does not oppose the grant of exemptive relief, including the requested waivers.

BACKGROUND

The Staff has engaged in settlement discussions with the UBS Firms in connection with the above-captioned civil proceeding, which was brought alleging violations of Section 15(c) of the Securities Exchange Act of 1934 ("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 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 UBS Firms misled tens of thousands of their customers regarding the fundamental nature and increasing risks associated with ARS that the UBS Firms underwrote, marketed and sold. The Complaint further alleges that through their financial advisors, marketing materials, and account statements, the UBS 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 UBS Firms' ARS that they needed to have available on a short-term basis. The Complaint further alleges that (i) on February 13, 2008, the UBS 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 UBS Firms. The Complaint alleges that the UBS Firms violated Section 15(c) of the Exchange Act.

The Judgment, among other things, permanently restrains and enjoins the UBS Firms and their respective agents, servants, employees, attorneys, and all persons in active concert or participation with them who received 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 are establishing a plan to restore approximately multiple billions of dollars in liquidity to their customers holding ARS. In order to restore the liquidity, the Consent provides, among other things, that (i) the UBS Firms will offer to purchase at par from all current or former customers (not including (a) broker-dealers or (b) banks acting as conduits for their customers) who, among other things, held their ARS at the UBS Firms as of Feb. 13, 2008, or purchased their ARS at the UBS Firms between Oct. 1, 2007 and Feb. 12, 2008 and transferred those ARS out of

the UBS Firms prior to February 13, 2008;² (ii) the UBS Firms will not take advantage of the liquidity solutions for the ARS in its own inventory without making them available, as soon as practicable, to its customers that opt in to the relief provided pursuant to the Consent who hold the same CUIISP(s) of the ARS in their accounts; and (iii) the UBS Firms shall use their best efforts to identify eligible customers who sold their ARS below par between February 13, 2008 and September 15, 2008 and, by October 1, 2008, the UBS Firms shall pay any customers so identified the difference between par and the price at which the customer sold the ARS, plus reasonable interest thereon.

DISCUSSION

The UBS Firms understand that the entry of the Judgment disqualifies them, affiliated issuers and other issuers from relying on certain exemptions under Regulation A and Rule 505 of Regulation D promulgated under the Securities Act, because the Judgment causes the UBS Firms to be subject to an “order, judgment, or decree . . . permanently restraining or enjoining [it] from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.” *See* 17 C.F.R. §§ 230.262(a)(4). Each UBS Firm is concerned that, should it be deemed to be a general partner, promoter, or underwriter of the securities, of an “issuer” for the purposes of Securities Act Rule 262(b)(2), the UBS Firm, its issuer affiliates, and other issuers with which it is associated in one of those listed capacities and which rely upon or may rely upon these offering exemptions when issuing securities would be prohibited from doing so. The Commission has the authority to waive the Regulations A and D exemption disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances. *See* 17 C.F.R. §§ 230.262 and 230.505(b)(2)(iii)(C).

The UBS Firms request that the Commission waive any disqualifying effects that the Judgment has under Regulation A and Rule 505 of Regulation D with respect to the UBS Firms, their affiliates or third-party issuers on the following grounds:

1. The UBS Firms’ conduct addressed in the Judgment and alleged in the Complaint does not pertain to Regulation A or D.
2. The disqualification of the UBS Firms, any of their issuer affiliates, or third-party issuers with which they are associated in one of the capacities listed above, from the exemptions under Regulation A and Rule 505 of Regulation D would be unduly and disproportionately severe given that the Judgment fully addresses the activity alleged in the Complaint through its injunctive and other relief. The disqualification would affect the business operations of the UBS Firms, their issuer affiliates, or such third party

² The Consent specifies that different categories of customers will receive offers at different times.

issuers by impairing their ability to issue securities pursuant to these exemptions to raise new capital or for other purposes. In addition, the disqualification would place the UBS Firms or their affiliates at a competitive disadvantage with respect to third parties.

3. The disqualification of the UBS Firms or their affiliates from the exemptions under Regulation A and Rule 505 of Regulation D also would be unduly and disproportionately severe, given that, pursuant to the Judgment, the UBS Firms are establishing a plan to restore multiple billions of dollars in liquidity to their customers holding ARS.

In light of the grounds for relief discussed above, we believe that disqualification is not necessary, in the public interest, or for the protection of investors, and that the UBS Firms have shown good cause that relief should be granted. Accordingly, we respectfully request the Commission to waive, effective as of the date of the Judgment, the disqualification provisions in Regulation A and Rule 505 of Regulation D to the extent they are applicable to the UBS Firms, any affiliate issuers, and certain third-party issuers described above as a result of the entry of the Judgment.³

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

Sincerely,



Kenneth J. Berman

cc: Johanna Losert

³ We note in support of this request that the Commission has in other instances granted relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D for similar reasons. *See, e.g.*, Citigroup Global Markets, Inc, SEC No-Action Letter (pub. avail. March 23, 2005); Morgan Stanley & Co. Incorporated, SEC No-Action Letter (pub. avail. Feb. 4, 2005); Lehman Brothers Inc., SEC No-Action Letter (pub. avail. Oct. 31, 2003); Citigroup Global Markets Inc., f/k/a/ Salomon Smith Barney Inc., SEC No. Action Letter (pub. avail. October 31, 2003); and Credit Suisse First Boston Corporation, SEC No-Action Letter (pub. avail. Jan. 29, 2002).