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May 20, 2015

VIA FIRST CLASS MAIL AND E-MAIL

Douglas J. Scheidt, Esq.
Associate Director and Chief Counsel
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0506

Re: United States of America v. UBS AG,
No. 3:15-cr-76-RNC (D. Conn. May 20, 2015)

Dear Mr. Scheidt:

We submit this letter on behalf of our client, UBS AG, the settling defendant in the above-captioned criminal proceeding (the "Settling Firm").

The Settling Firm seeks the assurance of the staff of the Division of Investment Management (the "Staff") that it would not recommend any enforcement action to the Securities and Exchange Commission (the "Commission") under Section 206(4) of the Investment Advisers Act of 1940 (the "Advisers Act") or Rule 206(4)-3 thereunder (the "Rule"), if an investment adviser that is required to be registered under the Advisers Act pays the Settling Firm, or any of its associated persons as defined in Section 202(a)(17) of the Advisers Act, a cash payment for the solicitation of advisory clients, notwithstanding the existence of the Guilty Plea, pursuant to a Plea Agreement, as discussed below. While the Plea Agreement pursuant to which the Guilty Plea was entered does not operate to prohibit or suspend the Settling Firm or any of its associated persons from being associated with or acting as an investment adviser and does not relate to solicitation activities on behalf of investment advisers, it may affect the ability of the Settling Firm and its associated persons to receive such payments.[1] The Staff in many other instances has granted no-action relief under the Rule in similar circumstances.

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[1] Under Section 9(a) of the Investment Company Act of 1940 ("Investment Company Act"), UBS AG and its affiliated persons will, as a result of the Guilty Plea, be prohibited from serving or acting as, among other things, an investment adviser or depositor of any registered investment company or principal underwriter for any registered open-end investment company or registered unit investment trust. UBS AG and affiliated persons of UBS AG who act in the capacities set forth in Section 9(a) of the Investment Company Act have filed an application under Section 9(c) of the Investment Company Act (the "Section 9(c) Application") requesting the Commission to issue both temporary and

BACKGROUND

On December 18, 2012, the Criminal Division, Fraud Section ("DOJ Criminal Division") of the United States Department of Justice (the "Department of Justice") and the Settling Firm entered into a Non-Prosecution Agreement ("LIBOR NPA") related to the LIBOR Conduct, described and defined below. In addition, the Settling Firm has entered into settlements, and agreed to a number of undertakings, as a result of investigations by other authorities in the United States, United Kingdom, Singapore, Hong Kong and Switzerland related to the LIBOR Conduct.

In connection with the undertakings related to the LIBOR Conduct, the Settling Firm has enhanced and implemented new compliance policies and procedures designed to detect, prevent, and investigate wrongdoing. These measures, which are discussed more fully below, included the creation of an Investigation Sounding Board within the Settling Firm. It was the Investigation Sounding Board that launched and directed an initial internal inquiry into FX spot trading following a June 2013 media report of manipulation of foreign exchange ("FX") rates. After identifying certain FX issues, the Settling Firm notified the DOJ Criminal Division (as well as the Antitrust Division of the Department of Justice and other authorities) that it had identified evidence of potential FX market trading coordination and thereafter provided extensive cooperation to the DOJ Criminal Division and other relevant authorities in connection with investigations into FX-related conduct. As part of its efforts to ascertain the extent of the FX conduct and identify those responsible, the UBS investigative team conducted approximately 170 interviews with employees, reviewed approximately nine million documents, and cooperated with the DOJ Criminal Division on a weekly, and often daily, basis.

The DOJ Criminal Division determined that the Settling Firm had breached the LIBOR NPA. Relevant considerations in reaching that determination included certain

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permanent orders exempting them, and UBS AG's future affiliated persons should any of them serve or act in any of the capacities set forth in Section 9(a) in the future, from the restrictions of Section 9(a). The applicants believe that they meet the standards for exemptive relief under Section 9(c). On May 20, 2014, the Commission issued the temporary order requested by the Section 9(c) Application and a notice with respect to the request for a permanent order. *See* In the Matter of UBS AG et al., Notice and Temporary Order, Investment Company Act Release No. 31612 (May 20, 2015).

The Guilty Plea will also disqualify the Settling Firm and certain of its affiliates from acting in certain capacities under certain provisions of the Securities Act of 1933 and the rules and regulations thereunder, including Rule 506 of Regulation D. The Settling Firm obtained a waiver of the disqualification from relying on Rule 506 of Regulation D that may arise with respect to the Settling Firm or any other person as a result of the entry of a Guilty Plea. *See* In the Matter of UBS AG, Order Under Rule 506(d), Securities Act Release No. 9787 (May 20, 2015).

conduct described in the Factual Basis for Breach, included as an exhibit to the Plea Agreement, namely certain employees engaged in (i) fraudulent and deceptive currency trading and sales practices in conducting certain FX market transactions with customers via telephone, email, and/or electronic chat, to the detriment of UBS AG's customers, and (ii) collusion with other participants in certain FX markets (the "FX Conduct").

Pursuant to a plea agreement, entered into on May 20, 2015, by the Settling Firm and the DOJ Criminal Division (the "Plea Agreement"), the Settling Firm entered a plea of guilty (the "Guilty Plea") on May 20, 2015, in the United States District Court, District of Connecticut (the "District Court") to the offense charged in the one-count criminal Information filed in District Court on May 20, 2015 (the "Information"). The Information charges that between approximately 2001 and in or about 2010, the Settling Firm devised and engaged in a scheme to defraud counterparties to interest rate derivatives transactions by secretly manipulating benchmark interest rates to which the profitability of those transactions was tied (the "LIBOR Conduct"). Specifically, the Information charges that the Settling Firm committed wire fraud in furtherance of that scheme in violation of Title 18, United States Code, Sections 1343 and 2 on or about June 29, 2009, by transmitting or causing the transmission of electronic communications, specifically: (i) an electronic chat between a senior derivatives trader (the "UBS Trader") employed by a subsidiary of the Settling Firm and an unaffiliated London-based interdealer derivatives broker (the "Broker"), in which the UBS Trader requested the Broker submit an increased Yen LIBOR rate favorable to the UBS Trader's position; (ii) a telephone call placed by the Broker at the UBS Trader's request to a Yen LIBOR submitter at another Yen panel bank, in which the Broker requested that the submitter increase the panel bank's Yen LIBOR submission that day; (iii) an electronic chat between the UBS Trader and a junior derivatives trader employed by the Settling Firm, who also served as a Yen LIBOR submitter for the Settling Firm (the "UBS Submitter"), in which the UBS Trader requested that the UBS Submitter increase the Settling Firm's Yen LIBOR submission rate to a rate favorable to the UBS Trader's trading positions; (iv) a subsequent Yen Libor submission from the Settling Firm to Thomson Reuters reflecting an accommodation of the UBS Trader's request to the UBS Submitter; and (v) a subsequent publication of a Yen LIBOR rate.

In addition, pursuant to the Plea Agreement, the Settling Firm agreed to:

1. Pay a fine of $203 million in connection with the conduct charged in the Information.

2. A three-year term of probation, in which the Settling Firm, among other things, would (i) not commit another federal crime during the term of probation;

(ii) cooperate fully with the DOJ Criminal Division and other authorities in any investigation of the Settling Firm or its affiliates in matters relating to the (a) manipulation of benchmark interest rates, (b) manipulation of, or fraud in, the FX spot and precious metals ("PM") markets, or (c) in connection with UBS's V10 Currency Indices ("V10"); (iii) implement and continue to implement a compliance program designed to prevent and detect misconduct related to the benchmark interest rate and FX markets throughout its operations, including those of its affiliates and subsidiaries, and to provide annual reports to the probation officer and the DOJ Criminal Division on its progress; (iv) further strengthen its compliance program and internal controls as required by other regulatory and enforcement authorities that have addressed any of the misconduct related to the benchmark interest rate and FX markets; (v) submit to the DOJ Criminal Division any report drafted by any compliance consultant or monitor imposed by the Board of Governors of the Federal Reserve System; and (vi) promptly bring to the attention of the DOJ Criminal Division all information regarding a violation of U.S. criminal law (a) concerning fraud or (b) governing the securities or commodities markets.

In turn, the DOJ Criminal Division has agreed that it will not file additional criminal charges against the Settling Firm or any of its affiliates or subsidiaries relating to the LIBOR Conduct, the FX Conduct, and information disclosed to the DOJ Criminal Division prior to the date of the Plea Agreement relating to PM trading markets or relating to V10. The Applicant expects that the District Court will enter a judgment against the Settling Firm that will require remedies that are materially the same as set forth in the Plea Agreement.

In addition, the Settling Firm has entered into settlements with several other authorities related to the FX Conduct, which include the U.S. Commodity Futures Trading Commission, the U.K. Financial Conduct Authority, the Swiss Financial Market Supervisory Authority, the Hong Kong Monetary Authority, and the Board of Governors of the Federal Reserve System and the State of Connecticut Department of Banking.[2]

DISCUSSION

The Rule prohibits an investment adviser that is required to be registered under the Advisers Act from paying a cash fee to any solicitor that has been convicted within

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[2] None of these settlements will require relief from Section 206(4) of the Advisers Act or Rule 206(4)-3 thereunder. *See In re UBS AG*, CFTC Docket No. 15-06 (Nov. 12, 2014); *UBS AG*, FCA Final Notice No. 186958 (Nov. 11, 2014); Foreign Exchange Trading at UBS AG, FINMA Ruling (Nov. 11, 2014); HKMA Announces Outcome of FX Investigation (Dec. 19, 2014), *available at* http://www.hkma.gov.hk/eng/key-information/press-releases/2014/20141219-5.shtml (finding no evidence of collusion or manipulation, but finding control deficiencies); *In re UBS AG and UBS AG, Stamford Branch*, Docket Nos. 15-005-B-FB, 15-005-B-FBR, 15-005-CMP-FB (May 20, 2015).

the previous ten years of any felony or misdemeanor involving conduct described in section 203(e)(2)(A) through (D) of the Advisers Act, including, among other things, conduct that arises out of the conduct of the business of a broker, dealer, bank, or foreign person performing a function substantially equivalent to any of the above. Section 202(a)(6) of the Advisers Act defines "convicted" to include a "verdict, judgment or plea of guilty." Entry of the Guilty Plea will cause the Settling Firm to be disqualified under the Rule, and accordingly, absent no-action relief, the Settling Firm and its associated persons will be unable to receive cash payments for the solicitation of advisory clients.

In the release adopting the Rule, the Commission stated that it "would entertain, and be prepared to grant in appropriate circumstances, requests for permission to engage as a solicitor a person subject to a statutory bar."[3] We respectfully submit that the circumstances present in this case are precisely the sort that warrant a grant of no-action relief.

The Rule's proposing and adopting releases explain the Commission's purpose in including the disqualification provisions in the Rule. The purpose was to prevent an investment adviser from hiring as a solicitor a person whom the adviser was not permitted to hire as an employee, thus doing indirectly what the adviser could not do directly. In the proposing release, the Commission stated that:

> [b]ecause it would be inappropriate for an investment adviser to be permitted to employ indirectly, as a solicitor, someone whom it might not be able to hire as an employee, the Rule prohibits payment of a referral fee to someone who . . . has engaged in any of the conduct set forth in Section 203(e) of the [Advisers] Act . . . and therefore could be the subject of a Commission order barring or suspending the right of such person to be associated with an investment adviser.[4]

The Plea Agreement, pursuant to which the Guilty Plea was entered, does not bar, suspend, or limit the Settling Firm or any person currently associated with the Settling Firm from acting in any capacity under the federal securities laws (except as provided in Section 9(a) of the Investment Company Act).[5] The Settling Firm and its associated persons have not been sanctioned for conduct in connection with the solicitation of

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[3] *See* Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Inv. Adv. Act Rel. No. 688 (July 12, 1979), 17 S.E.C. Docket (CCH) 1293, 1295.

[4] *See* Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Inv. Adv. Act Rel. No. 615 (Feb. 2, 1978), 14 S.E.C. Docket (CCH) 89, 91.

[5] *See supra*, footnote 1.

advisory clients for investment advisers.[6] The conduct charged in the Information does not pertain to advisory activities.

In addition, as discussed in the Section 9(c) Application, the Settling Firm has undertaken extensive remediation measures to address the FX and LIBOR-related conduct. Accordingly, consistent with the Commission's reasoning, there does not appear to be any reason to prohibit any investment adviser from paying the Settling Firm or its associated persons for engaging in solicitation activities under the Rule.

The Staff previously has granted numerous requests for no-action relief from the disqualification provisions of the Rule to individuals and entities found by the Commission to have violated a wide range of federal securities laws and rules thereunder, permanently enjoined by courts of competent jurisdiction from engaging in or continuing certain conduct or practices in connection with the purchase or sale of securities, or subject to a conviction.[7]

UNDERTAKINGS

In connection with this request, the Settling Firm undertakes that:

1. it or any person associated with it will conduct any cash solicitation arrangement entered into with any investment adviser registered or required to be registered under Section 203 of the Advisers Act in compliance with the terms of Rule

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[6] The Settling Firm additionally notes that it has not violated, or aided and abetted another person in violation of, the Rule, nor have individuals who may perform solicitation activities on behalf of the Settling Firm or its associated persons been personally disqualified under the Rule.

[7] *See, e.g.*, Royal Bank of Canada, SEC No-Action Letter (pub. avail. Dec. 19, 2014); Citigroup Global Markets Inc., SEC No-Action Letter (pub. avail. Aug. 6, 2014); Credit Suisse AG, SEC No-Action Letter (pub. avail. May 20, 2014); RBS Securities, Inc., SEC No-Action Letter (Nov. 26, 2013); Wells Fargo Bank, N.A., SEC No-Action Letter (pub. avail. July 15, 2013); J.P. Morgan Securities LLC, SEC No-Action Letter (pub. avail. Jan. 9, 2013); Wells Fargo Bank, N.A., SEC No-Action Letter (pub. avail. Sept. 21, 2012); GE Funding Capital Market Services, Inc., SEC No-Action Letter (pub. avail. Jan. 25, 2012); J.P. Morgan Securities LLC, SEC No-Action Letter (pub. avail. Jun. 29, 2011); UBS Financial Services Inc., SEC No-Action Letter (pub. avail. May 9, 2011); Citigroup Inc., SEC No-Action Letter (pub. avail. Oct. 22, 2010); Banc of America Investment Services, Inc., SEC No-Action Letter (pub. avail. June 10, 2009); Barclays Bank PLC, SEC No-Action Letter (pub. avail. June 6, 2007); Morgan Stanley & Co. Incorporated, SEC No-Action Letter (pub. avail. May 15, 2006); American International Group, Inc., SEC No-Action Letter (pub. avail. Feb 21, 2006); Goldman, Sachs & Co., SEC No-Action Letter (pub. avail. Feb. 23, 2005); Morgan Stanley & Co. Incorporated, SEC No-Action Letter (pub. avail. Feb. 4, 2005); Prime Advisors, Inc.; SEC No-Action Letter (pub. avail. Nov. 8, 2001); Legg Mason Wood Walker, Inc., SEC No-Action Letter (pub. avail. June 11, 2001); Dreyfus Corp., SEC No-Action Letter (pub. avail. March 9, 2001); UBS Securities Inc., SEC No-Action Letter (pub. avail. Feb. 7, 2001).

206(4)-3 as if the Settling Firm was not a disqualified person for purposes of the Rule by virtue of the Guilty Plea;

2. it will comply with the terms of the Plea Agreement, including, but not limited to, the payment of a fine;

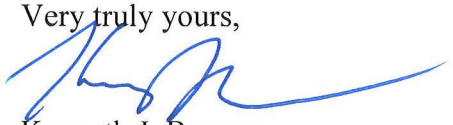
3. for ten years from the date of the entry of the Guilty Plea, the Settling Firm and any person associated with it or any investment adviser with which the Settling Firm or any person associated with it has a solicitation arrangement subject to Rule 206(4)-3 will disclose the Plea Agreement and the Guilty Plea in a written document that is delivered to each person whom the Settling Firm or its associated persons solicits (a) not less than 48 hours before the person enters into a written or oral investment advisory contract with the investment adviser or (b) at the time the person enters into such a contract, if the person has the right to terminate such contract without penalty within five business days after entering into the contract.

CONCLUSION

We respectfully request the Staff to advise us that it will not recommend enforcement action to the Commission if an investment adviser that is required to be registered with the Commission pays the Settling Firm or any of its associated persons a cash payment for the solicitation of advisory clients, notwithstanding the Guilty Plea.

Please do not hesitate to call the undersigned at (202) 383-8050 regarding this request.

Very truly yours,



Kenneth J. Berman