



DIVISION OF
CORPORATION FINANCE

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

September 19, 2013

Mr. Steven J. Slutzky
Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022

Re: United States of America v. UBS Securities Japan Co., Ltd.
UBS AG – Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act

Dear Mr. Slutzky:

This is in response to your letter dated September 19, 2013, written on behalf of UBS AG (Company) and UBS Securities Japan Co., Ltd., (UBS Japan) and constituting an application for relief from the Company being considered an “ineligible issuer” under Rule 405(1)(v) of the Securities Act of 1933 (Securities Act). The Company requests relief from being considered an “ineligible issuer” under Rule 405, due to the entry on September 19, 2013, of a Judgment against UBS Japan. The Judgment finds UBS Japan guilty of felony wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2.

Based on the facts and representations in your letter, and assuming the Company and UBS Japan comply with the Judgment, the Commission, pursuant to delegated authority has determined that the Company has made a showing of good cause under Rule 405(2) of the Securities Act and that the Company will not be considered an ineligible issuer by reason of the entry of the Order. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted. Any different facts from those represented or non-compliance with the Judgment might require us to reach a different conclusion.

Sincerely,

Mary Kosterlitz
Chief, Office of Enforcement Liaison
Division of Corporation Finance

September 19, 2013

VIA FIRST CLASS MAIL AND E-MAIL

Mary Kosterlitz, Esq.
Chief, Office of Enforcement Liaison
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-7553

United States of America v. UBS Securities Japan Co., Ltd.

Dear Ms. Kosterlitz:

We submit this letter on behalf of our client, UBS AG, a reporting company registered under Section 12 of the Securities Exchange Act of 1934 (the “Exchange Act”) and the parent company of UBS Securities Japan Co., Ltd, the settling defendant in the above-captioned criminal proceeding (the “Settling Firm”). We refer to UBS AG and its subsidiaries collectively as “UBS”.

We hereby request a determination by the Division of Corporation Finance (the “Division”) of the Securities and Exchange Commission (the “Commission”), acting pursuant to authority duly delegated by the Commission, that UBS AG should not be an “ineligible issuer” as defined under Rule 405 promulgated under the Securities Act of 1933 (the “Securities Act”) as a result of the entry of the Judgment against the Settling Firm, which is described below. Relief from the ineligible issuer provisions is appropriate in the circumstances of this case for the reasons set forth below. UBS AG requests that this determination be made effective as of the entry of the Judgment.

BACKGROUND

On December 19, 2012, the Fraud Section of the Criminal Division of the United States Department of Justice (the “Department of Justice”) filed a one-count criminal information (the “Information”) in the District Court of Connecticut (the “District Court”) charging the Settling Firm with wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2. The Information charges that between approximately 2006 and at least 2009, the Settling Firm engaged in a scheme to defraud counterparties to interest rate derivatives trades executed on its behalf by secretly manipulating benchmark

interest rates to which the profitability of those trades was tied. The Information charges that, in furtherance of this scheme, on or about February 25, 2009, the Settling Firm committed wire fraud in violation of Title 18, United States Code, Sections 1343 and 2 by transmitting, or causing the transmission of, (i) an electronic chat between a derivatives trader employed by the Settling Firm and a broker employed at an interdealer brokerage firm; (ii) a subsequent submission for the London InterBank Offered Rate for Japanese Yen (“Yen LIBOR”) to Thomson Reuters; and (iii) a subsequent publication of a Yen LIBOR rate through international and interstate wires, at least one of which passed through, among other locations and facilities, servers located in Stamford, Connecticut.

Pursuant to a plea agreement (together with its attachments, the “Plea Agreement”), the Settling Firm entered a plea of guilty on December 19, 2012 in the District Court. In the Plea Agreement, the Settling Firm, among other things, agreed to a fine of \$100 million. On September 19, 2013, the District Court entered a judgment against the Settling Firm (the “Judgment”) that requires remedies that are the same as set forth in the Plea Agreement.

In addition, UBS AG has entered into a non-prosecution agreement with U.S. Department of Justice, dated December 18, 2012, (together with its attachments, the “Non-Prosecution Agreement”) relating to submissions of Yen LIBOR and other benchmark interest rates. In the Non-Prosecution Agreement, UBS AG has agreed to, among other things, (i) provide full cooperation with the Department of Justice and any other law enforcement or government agency designated by the Department of Justice until the conclusion of all investigations and prosecutions arising out of the conduct described in the Non-Prosecution Agreement; (ii) strengthen its internal controls as required by certain other U.S. and non-U.S. regulatory agencies that have addressed the misconduct described in the Non-Prosecution Agreement; and (iii) the payment of \$500 million, which includes amounts incurred by the Settling Firm for criminal penalties arising from the Judgment.

Furthermore, other U.S. and non-U.S. regulatory agencies have addressed the misconduct described in the Non-Prosecution Agreement. Of particular note, the U.S. Commodity Futures Trading Commission issued an Order dated December 19, 2012, (the “CFTC Order”) with respect to the matters described therein. The Japanese Financial Services Authority (“JFSA”) issued a Business Improvement Order on December 16, 2011 that required the Settling Firm to (A) develop a plan to ensure compliance with its legal and regulatory obligations and to establish a control framework that is designed to prevent recurrences of the misconduct; and (B) provide periodic written reports to the JFSA regarding the Settling Firm’s implementation of the measures required by the order.

Neither the Information, the Plea Agreement nor the Judgment alleges any scienter-based violations of the Securities Act or the Exchange Act.

DISCUSSION

Effective on December 1, 2005, the Commission reformed and revised the registration, communications and offering procedures under the Securities Act.¹ As part of these reforms, the Commission created a new category of issuer defined under Rule 405 as a well-known seasoned issuer (“WKSI”). A WKSI is eligible under the new rules, among other things, to register securities for offer and sale under an “automatic shelf registration statement,” as so defined. A WKSI is also eligible for the benefits of a streamlined registration process, including the use of free-writing prospectuses in registered offerings pursuant to Rules 164 and 433 under the Securities Act. These benefits, however, are unavailable to issuers defined as “ineligible issuers” under Rule 405.

An issuer is an “ineligible issuer,” as defined under Rule 405, if, among other things, “[w]ithin the past three years, the issuer or any entity that at the time was a subsidiary of the issuer was convicted of any felony or misdemeanor described in paragraphs (i) through (iv) of section 15(b)(4)(B) of the Securities Exchange Act of 1934.” Rule 405(1)(v). Notwithstanding the foregoing, paragraph (2) of the definition provides that an issuer “shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.” The Commission has delegated authority to the Division of Corporation Finance to make such a determination pursuant to 17 CFR § 200.30-1(a)(10).

The Judgment might be deemed to render UBS AG an ineligible issuer for a period of three years after the Judgment is entered.² This result would preclude UBS AG from qualifying as a WKSI and having the benefits of automatic shelf registration and other provisions of the Securities Offering Reform for three years.

As set forth above, Rule 405 authorizes the Commission to determine for good cause that an issuer shall not be an ineligible issuer, notwithstanding that the issuer or a subsidiary of the issuer becomes subject to an otherwise disqualifying order. UBS AG believes that there is good cause for the Commission to make such a determination based

¹ Securities Offering Reform, Securities Act Release No. 8591, Exchange Act Release No. 52,056, Investment Company Act Release No. 26,993, 70 Fed. Reg. 44,722, 44,790 (Aug. 3, 2005).

² The Settling Firm is a wholly-owned subsidiary of UBS AG.

on precedent as well as the Division's Statement³ on granting such waivers, on the following grounds:

None of the LIBOR-related conduct described in the Plea Agreement or the Judgment pertains to activities undertaken by UBS AG, its affiliates, or its subsidiaries in connection with UBS AG's or its subsidiaries' roles as issuers of securities (or any disclosure related thereto) or any of their filings with the Commission (the "UBS AG Disclosures"). The LIBOR-related conduct described in the Plea Agreement and the Judgment did not involve misstatements or omissions in the UBS AG Disclosures. As the Division Statement notes, in such a case, the waiver request would likely be granted, even if the violation is scienter-based.⁴

Furthermore, in the Non-Prosecution Agreement, the Department of Justice states that UBS AG's cooperation has been "exceptional in many important aspects." The Non-Prosecution Agreement notes that UBS AG, among other things, (i) conducted a thorough investigation of the misconduct, reported all findings to the Department of Justice and sought to effectively remediate problems; (ii) has provided highly valuable information that significantly expanded and advanced the regulatory and criminal investigations; and (iii) made positive changes in management, compliance, training and how it responds to regulatory and criminal investigations. In particular, the Non-Prosecution Agreement states that the Department of Justice has received favorable reports from the JFSA regarding the Settling Firm's effective implementation of the remedial measures that the JFSA imposed pursuant to the Business Improvement order.

Accordingly, based upon the three factors identified in the Division Statement (remedial steps taken; pervasiveness and timing; and the impact on the issuer if the Waiver request is denied), we believe that the Waiver request is warranted.

1. Remedial Steps Taken. The Settling Firm and UBS AG have been proactive in strengthening its compliance and internal controls, standards and procedures, and will further strengthen them. The Non-Prosecution Agreement states that "in light of active investigations by various regulators of the conduct described in Appendix A [of the Non-Prosecution Agreement] and the role that such regulators will continue to play in

³ Division of Corporation Finance, Statement on Well-Known Seasoned Issuer Waivers (July 8, 2011), available at <http://www.sec.gov/divisions/corpfin/guidance/wksi-waivers-interp.htm> (the "Division Statement"). We note that the Division Statement relates to the grant of waivers that are necessary as a result of violations of the federal securities laws. While the Judgment and the Non-Prosecution Agreement do not assert any such violations, we believe that the standards set forth in the Division Statement are relevant to its consideration of the request for a waiver.

⁴ The Division Statement.

reviewing UBS's compliance standards, the Fraud Section has determined that adequate compliance measures have been and will be established."

In particular, in response to the Business Improvement Order, the Settling Firm has undertaken a number of steps to improve its internal controls and enhance its compliance environment:

- In order to identify deficiencies in the Settling Firm's risk control systems that may have led to its management and control functions being unaware of the misconduct, the Settling Firm conducted a comprehensive micro-level review of all of its business divisions, including confirming all individual business tasks, compliance risks (including hidden risks for specific business tasks), controls and monitoring. Based on such review, the Settling Firm's Compliance Department monitors such compliance risks depending on risk characteristics after each Department develops a control process.
- The Settling Firm has created a dedicated Communication Monitoring Team that reviews not only potentially inappropriate requests involving benchmark submission rates, but also other compliance risks identified in the review of all business divisions.
- In order to reemphasize supervisory responsibilities with respect to compliance, the Settling Firm's Employment Rules were amended to expressly confirm that "failure of oversight responsibilities for subordinates" will be treated as a cause for disciplinary action. In addition, the Settling Firm has defined supervisory responsibilities more clearly by ensuring that appointed Heads of Departments in each affected Fixed Income Currencies & Commodities ("FICC") area, rather than the Head of FICC, be made the formal supervisors with regulatory responsibility for their respective business areas and will continue this approach in subsequent equivalent business areas. The Settling Firm also started monthly regulatory forum meetings for all of the Heads of FICC Departments where they are encouraged to raise and discuss all regulatory, compliance and other issues.
- The Settling Firm has been training (and will periodically retrain) all employees as to the importance of full compliance with the Settling Firm's Code Of Conduct, the obligation to report inappropriate activities, and the Settling Firm's whistleblowing procedures and new communication monitoring framework. At each training session, members of management have provided a key opening message in order to emphasize the importance of employee training. Specialized training

in LIBOR guidelines is required for Settling Firm employees working in the Derivatives Desk and Short Term Interest Rates Desk. Moreover, specific disciplinary cases will be discussed as much as possible at these training sessions in order to alert employees of the Settling Firm to the consequences of wrongdoing without unduly infringing upon the privacy of disciplined individuals.

More generally, the CFTC Order requires UBS to comply with significant audit and monitoring conditions. These conditions set standards for submission of interest rate benchmarks (“Submissions”), qualifications of submitters and supervisors, documentation, training and firewalls. Under the CFTC Order, UBS must maintain monitoring systems or electronic exception reporting systems that identify possible improper or unsubstantiated Submissions. The CFTC Order requires UBS to conduct internal audits of reasonable and random samples of its Submissions every six months. Additionally, UBS must retain an independent, third-party auditor to conduct a yearly audit of the Submission process for five years and a copy of the report must be provided to the CFTC.

Finally, all of the individuals, whether at UBS AG or the Settling Firm, who were identified as responsible for the conduct in the Plea Agreement have either resigned or have had their employment terminated.

2. Pervasiveness and Timing. While UBS AG acknowledges that the misconduct underlying the Plea Agreement occurred over a prolonged period of time (from 2006 through June 2010), it involved only approximately 14 of UBS’ approximately 65,000 total employees; members of senior management of UBS were not implicated in the misconduct; none of the misconduct involved UBS Disclosures; and while some of the individuals involved in the trader-related conduct described in the Plea Agreement were employees of UBS AG, none of these individuals had any responsibility for, or role in, preparing the UBS AG Disclosures. All of the individuals, whether at UBS AG or the Settling Firm, who were identified as being responsible for the conduct in the Plea Agreement have either resigned or have had their employment terminated. Therefore, the misconduct cannot be viewed as pervasive within UBS.

Furthermore, as the Division Statement notes, “[F]raudulent conduct resulting from individuals not in positions of authority or leadership create fewer questions about the reliability of an issuer’s disclosures than a pattern or history of misconduct by senior management or tone at the top demonstrating a lack of commitment to good disclosure. Changes in personnel would also be relevant to this factor.” Because none of the members of the senior management of UBS were implicated in the misconduct, the conduct addressed in the Plea Agreement ended in 2010 and the individuals responsible for the misconduct are no longer employed by UBS, we believe the foregoing discussion

addresses these concerns. Finally, as noted in the discussion concerning remedial actions, UBS has taken a number of actions to reinforce its commitment to compliance.

3. Impact on the Issuer if the Waiver Request Is Denied. Designation of UBS AG as an ineligible issuer would be unduly and disproportionately severe, given that UBS AG has fully addressed the conduct described in the Plea Agreement and the Judgment through, among other things, (i) further strengthening of internal controls as required by certain other U.S. and non-U.S. regulatory agencies that have addressed the misconduct described in the Plea Agreement as well as the Non-Prosecution Agreement; and (ii) the payment of \$500 million, which includes amounts incurred by the Settling Firm for criminal penalties arising from the Judgment.

In addition, it is possible that UBS AG's loss of WKSI status could have harmful effects for the markets as a whole in light of its significance to the markets and its interconnectedness to other market participants and adversely impact UBS AG's access to the U.S. capital markets.

Furthermore, UBS AG is itself a global financial institution that relies on automatic shelf registration statements to conduct day-to-day business transactions, and frequently offers and sells registered securities under automatic shelf registration statements. UBS AG estimates that it conducted over 2,500 offerings from its WKSI shelf registration statement in 2012 and utilized approximately 200 non-statutory free writing prospectuses. Consequently, the automatic shelf registration process provides an important means of access to the United States capital markets and certain lines of UBS AG's business could encounter significant difficulty operating without the ability to utilize automatic shelf registration.

Accordingly, for UBS AG, the shelf registration process and the ability to utilize non-statutory free writing prospectuses provides an important means of access to the U.S. capital markets. Consequently, the ability to avail itself of automatic shelf registration and the other benefits available to a WKSI is extremely important to UBS AG's ability to raise capital and conduct its operations. In this regard, denying this waiver request would be unduly and disproportionately severe given that if the requested relief is not granted, UBS AG would incur substantial additional regulatory burdens and costs for conduct that has been discontinued and remedied.

In light of the foregoing, subjecting UBS AG to ineligible issuer status is not necessary under the circumstances, either in the public interest or for the protection of investors, and good cause exists for the grant of the requested relief. Accordingly, we respectfully request that the Division, acting pursuant to authority duly delegated by the Commission and pursuant to paragraph (2) of the definition of "ineligible issuer" in Rule 405, determine that under the circumstances UBS AG will not be considered an

Mary Kosterlitz, Esq.
Chief, Office of Enforcement Liaison
Division of Corporation Finance
Securities and Exchange Commission

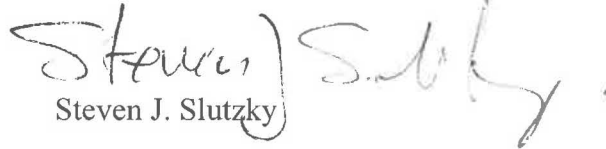
8

September 19, 2013

“ineligible issuer” within the meaning of Rule 405 as a result of the Judgment. We further request that this determination be made effective as of the entry of the Judgment.

If you have any questions regarding this request, please contact me at (212) 909-6036.

Sincerely yours,


Steven J. Slutzky