



DIVISION OF
CORPORATION FINANCE

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

March 19, 2009

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

**Re: SEC v. UBS AG, Civil Action No. 09-cv-00316 (D.D.C.)
Waiver Request under Regulation A and Rule 505 of Regulation D**

Dear Mr. Berman:

This responds to your letter dated March 19, 2009, written on behalf of UBS AG, 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 have arisen by reason of the Final Judgment as to UBS AG signed March 19, 2009 and entered on the same day by the United States District Court for the District of Columbia in *SEC v. UBS AG*, Civil Action No. 09-cv-00316 (the "Judgment"). The Judgment permanently restrains and enjoins UBS AG from violating section 15(a) of the Securities Exchange Act of 1934 and section 203(a) of the Investment Advisers Act of 1940. Under the Judgment, UBS AG was ordered to pay disgorgement of \$200 million and comply with certain undertakings.


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 UBS AG 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, UBS AG and other persons subject to disqualification from exemptions otherwise available under Regulation A and Rule 505 that arose by reason of entry of the Judgment are granted relief.

Kenneth J. Berman, Esq.
UBS AG
March 19, 2009
Page 2

We note that this waiver relief does not cover any disqualification that may result from a failure by UBS AG to fulfill its obligations under the deferred prosecution agreement referred to in footnote 2 of your letter.

Very truly yours,

A handwritten signature in black ink, reading "Gerald J. Laporte". The signature is written in a cursive style with a large initial "G".

Gerald J. Laporte
Chief, Office of Small Business Policy

March 19, 2009

VIA HAND AND 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 AG

Dear Mr. Laporte:

We submit this letter on behalf of our client, UBS AG, the settling defendant in the above-captioned civil proceeding, which was filed on February 18, 2009. UBS AG hereby requests, 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 UBS AG or any of its affiliates as a result of the entry of a Judgment as to Defendant UBS AG (the "Judgment"), which is described below. The Judgment was issued on March 19, 2009.¹ UBS AG requests that these waivers be granted effective as of the date of the Judgment. It is our understanding that the Staff of the Division of Enforcement (the "Staff") does not oppose the grant of exemptive relief, including the requested waivers.

¹ Securities and Exchange Commission v. UBS AG, 09 Civ. 00316 (D.D.C. March 19, 2009)

BACKGROUND

The Staff engaged in settlement discussions with UBS AG in connection with the above-captioned civil proceeding, which was brought alleging violations of Section 15(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(a) of the Investment Advisers Act of 1940 (the “Advisers Act”). As a result of these discussions, UBS AG submitted an executed Consent of Defendant UBS AG (the “Consent”) to be presented by the staff to the Commission.²

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, UBS AG agreed to consent to certain undertakings and 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 alleges that from at least 1999 through 2008, UBS AG acted as an unregistered broker-dealer and investment adviser to thousands of United States cross-border clients by providing cross-border brokerage and investment advisory services to those clients largely through client advisors. The Complaint alleges that this cross-border business was serviced primarily from Switzerland. The Complaint alleges that UBS AG used United States jurisdictional means to engage in a cross-border business of soliciting, establishing and maintaining brokerage accounts; executing securities transactions; and providing investment advice for its United States cross-border clients. Finally, the Complaint alleges that at all times UBS AG was aware that it could provide these services to United States cross-border clients only through an entity registered with the Commission as a broker-dealer or investment adviser.

The Judgment, among other things, permanently restrains and enjoins UBS AG and UBS AG’s 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(a) of the Exchange Act and Section 203(a) of the Advisers Act. Additionally, UBS AG, pursuant to the Judgment, shall pay disgorgement of \$200 million to the Commission.

DISCUSSION

UBS AG understands that the entry of the Judgment disqualifies it, affiliated issuers and certain other issuers from relying on certain exemptions under Regulation A

² Concurrent to the entry of the Consent with Commission, UBS AG also entered into a deferred prosecution agreement (“DPA”) with the United States Department of Justice. Pursuant to the DPA, UBS AG agreed to pay \$580 million in fines, penalties, interest and restitution (not including the payments to be made pursuant to the Judgment as described herein).

and Rule 505 of Regulation D promulgated under the Securities Act, because the Judgment causes UBS AG 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). UBS AG is concerned that, should it be deemed to be a general partner, promoter, beneficial owner of 10 percent or more of any class of the equity securities, or underwriter of the securities, of an “issuer” for the purposes of Securities Act Rule 262(b)(2), UBS AG, its issuer affiliates, and other issuers with which it is associated in one of those listed capacities would be prohibited from relying upon these offering exemptions when issuing securities. 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).

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

1. UBS AG’s conduct addressed in the Judgment and alleged in the Complaint does not pertain to Regulation A or D.
2. The disqualification of any of UBS AG, its 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 UBS AG, its issuer affiliates, or such third party 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 UBS AG and its affiliates at a competitive disadvantage with respect to third parties.
3. The disqualification of UBS AG’s affiliates from the exemptions under Regulation A and Rule 505 of Regulation D also would be unduly and disproportionately severe, given that UBS AG, pursuant to the Judgment, shall pay disgorgement of \$200 million to the Commission.

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 UBS AG has 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 UBS AG, any of its 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).