

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 10433 / October 27, 2017**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 81974 / October 27, 2017**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 4803 / October 27, 2017**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18270**

**In the Matter of**

**UBS FINANCIAL SERVICES  
INC.,**

**Respondent.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND  
CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTION 8A OF THE  
SECURITIES ACT OF 1933, SECTION  
15(b) OF THE SECURITIES  
EXCHANGE ACT OF 1934, AND  
SECTION 203(e) OF THE INVESTMENT  
ADVISERS ACT OF 1940, MAKING  
FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A  
CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”), and Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”), against UBS Financial Services Inc. (“UBS” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, UBS has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings

herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, UBS consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 15(b) of the Securities Exchange Act of 1934, and Section 203(e) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and UBS’s Offer, the Commission finds that:

#### **Summary**

1. From at least January 2010 through June 2015 (the “Relevant Period”), UBS disadvantaged certain retirement plan and charitable organization brokerage customers (“Eligible Customers”)<sup>1</sup> by failing to ascertain that they were eligible for a less expensive share class, and recommending and selling them more expensive share classes in certain open-end registered investment companies (“mutual funds”) when less expensive share classes were available. UBS did so without disclosing that it would receive greater compensation from the Eligible Customers’ purchases of the more expensive share classes. Eligible Customers did not have sufficient information to understand that UBS had a conflict of interest resulting from compensation it received for selling the more expensive share classes. Specifically, UBS recommended and sold these Eligible Customers Class A shares with an up-front sales charge, or Class B or Class C shares with a back-end contingent deferred sales charge (“CDSC”) (a deferred sales charge the purchaser pays if the purchaser sells the shares during a specified time period following the purchase) and higher ongoing fees and expenses, when these Eligible Customers were eligible to purchase load-waived Class A and/or no-load Class R shares. UBS omitted material information concerning its compensation when it recommended the more expensive share classes. UBS also did not disclose that the purchase of the more expensive share classes would negatively impact the overall return on the Eligible Customers’ investments, in light of the different fee structures for the different fund share classes.

2. In making those recommendations of more expensive share classes while omitting material facts, UBS violated Sections 17(a)(2) and 17(a)(3) of the Securities Act. These provisions prohibit, respectively, in the offer or sale of securities, obtaining money or property by means of an omission to state a material fact necessary to make statements made not misleading, and engaging in a course of business which operates as a fraud or deceit on the purchaser.

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<sup>1</sup> The term “Eligible Customers” may include, among other things, customers that held the following type of retirement accounts: 401(k) plans, 403(b) plans, profit-sharing plans, defined benefit plans, and certain IRA accounts. Eligible Customers also include accounts held by tax-exempt, non-profit organizations.

## **Respondent**

3. **UBS** is a subsidiary of UBS AG and is registered with the Commission as a broker-dealer and investment adviser. UBS is incorporated in Delaware and has its principal place of business in New York, New York.

## **Background**

4. Mutual funds often offer different fund share classes that each represent a common interest in an investment portfolio, but differ in the amount and types of sales charges and fees a fund investor may incur. For funds that have sales charges or sales “loads,” the timing and amount of sales loads typically vary between share classes. These sales charges are normally assessed as a percentage of an investor’s investment. For example, Class A shares often are subject to an up-front sales charge in addition to ongoing marketing and distribution fees, known as Rule 12b-1 fees. Class B and Class C shares often do not have an up-front sales charge, but have higher Rule 12b-1 fees. Class R shares have no up-front sales charges, but may have sub-classes with Rule 12b-1 fees equal to or greater than those of Class A shares.

5. Many mutual funds provide sales-load waivers for Class A shares to qualified retirement and charitable accounts. Such waivers are important to investors because they allow investors to buy shares at the fund’s current net asset value. Even when not eligible to purchase load-waived Class A shares, qualified retirement customers may be eligible to purchase Class R shares. Eligibility requirements for load-waived Class A shares and Class R shares vary from fund to fund, and are disclosed in the prospectus and statement of additional information for each relevant fund.

6. The sales charges and fees associated with different share classes affect mutual fund shareholders’ returns. A mutual fund investor eligible for a sales charge waiver in Class A shares will likely obtain a higher return by investing in Class A shares than incurring the ongoing sales-related costs associated with Class B and Class C shares in the same fund. However, in the absence of a sales charge waiver, the investor may, in certain instances, be better off investing in Class R shares (if eligible) rather than Class A, B or C shares because of the impact of the sales charge in Class A shares on the return and the lower ongoing fees and expenses associated with certain Class R shares.

7. Sales charges and fees associated with different share classes also affect a broker-dealer’s revenue earned from selling mutual fund shares. Broker-dealers typically receive all or a portion of the sales charges and Rule 12b-1 fees charged to their customers. For example, broker-dealers generally receive higher ongoing fees when their customers hold Class B and Class C shares as compared to Class A or Class R shares. Broker-dealers therefore may earn more compensation when recommending a share class to customers if the customer’s purchase of that share class will increase a broker-dealer’s revenue when compared to another share class in the same fund that the broker-dealer could recommend to the customer.

**UBS Omitted Material Facts When Recommending  
Class A, Class B, and Class C Mutual Fund Shares to Eligible Customers**

8. From at least January 2010 through June 2015, UBS did not have adequate systems and controls in place to determine whether a customer was eligible to purchase load-waived Class A shares or Class R shares. As a result, UBS failed to provide available sales charge waivers in at least 113,543 transactions involving approximately 15,250 Eligible Customer accounts. These were transactions in which Eligible Customers could have purchased load-waived Class A shares, but UBS recommended and sold them Class A shares with an up-front sales charge, or Class B or Class C shares with a CDSC and higher ongoing fees and expenses than the load-waived Class A shares. In addition, UBS failed to provide Eligible Customers the opportunity to purchase Class R shares in at least 46,305 transactions, resulting in the Eligible Customers instead purchasing Class A shares with an up-front sales charge, or Class B or Class C shares with a CDSC and higher ongoing fees and expenses. In connection with all of these recommendations, UBS omitted to state to Eligible Customers that it would earn more revenue from customer purchases of Class A shares with an up-front sales charge or Class B or Class C shares with a CDSC and higher ongoing expenses as compared to load-waived Class A shares and no-load Class R shares for which the customers were eligible. UBS omitted material information concerning its compensation when it recommended the more expensive share classes. UBS also omitted to state to the Eligible Customers that their purchases of the more expensive shares would negatively impact the customers' overall investment returns. In the context of multiple-share-class mutual funds, in which the only reason for the differences in rate of return among classes is the cost structure of the different classes, information about this cost structure would accordingly be important to a reasonable investor. UBS has identified the Eligible Customers who purchased more expensive shares than those shares for which they were eligible.

9. Eligible Customers paid a total of \$18,529,533 in up-front sales charges, CDSCs, and higher ongoing fees and expenses from purchases of mutual fund share classes for which they did not receive an applicable sales charge waiver or did not otherwise receive the most cost-effective share class for which they were eligible that was available on UBS's platform during the Relevant Period. UBS has issued payments (including interest) to all Eligible Customers who purchased more expensive shares than those shares for which they were eligible, crediting the accounts of current customers and mailing reimbursement checks to former customers. UBS also has converted all Eligible Customers holding Class B and Class C shares to Class A or Class R shares with the lowest expenses for which they are eligible, at no cost to the customers.

**Violations**

10. As a result of the conduct described above, UBS willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit any person, in the offer or sale of securities, from obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make statements made not misleading, and from engaging in any transaction, practice, or course of business which operates

or would operate as a fraud or deceit upon the purchaser, respectively.<sup>2</sup> UBS omitted to state to Eligible Customers that UBS would earn greater compensation in recommending Class A shares with an up-front sales charge, or Class B or Class C shares with a CDSC and higher ongoing fees and expenses, because these share classes would generate additional revenue for UBS compared to other less expensive share classes available to Eligible Customers. Thus, Eligible Customers did not have sufficient information to understand that UBS had a conflict of interest resulting from sales of the more expensive share classes. UBS also omitted to state to the Eligible Customers that the purchase of these more expensive shares would negatively impact the customers' overall investment returns, in light of the different fee structures for the different fund share classes. As a result, Eligible Customers incurred up-front sales charges, CDSCs, and higher ongoing fees and expenses, and UBS received additional revenue.

### **Undertakings**

11. UBS undertakes to make reasonable additional efforts to locate and/or contact Eligible Customers who either have not yet cashed or deposited their payments, or who have changed addresses, to attempt to complete distribution of approximately \$617,490 to approximately 970 outstanding payees as of September 11, 2017.

12. Within 180 days of the date of this Order, UBS will provide to the Commission Staff a final accounting and certification specifying, as to these outstanding payments:

- i. all payments that were completed (including the amount as to each Eligible Customer);
- ii. payments that could not be completed despite UBS's reasonable additional efforts to locate and/or contact these Eligible Customers; and
- iii. a description of the additional efforts made to locate and/or contact the Eligible Customers.

Any and all supporting documentation for the accounting and certification will be provided to the Commission staff upon request. UBS will cooperate with any reasonable requests by the Commission staff for information in connection with the accounting and certification.

13. UBS agrees to be responsible for all of UBS's tax compliance responsibilities associated with the outstanding payments and will retain any professional services necessary. The costs and expenses of any such professional services will be borne by UBS, and the payment of taxes applicable to the outstanding payments, if any, will not be paid out of the outstanding payments.

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<sup>2</sup> A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

14. Commission staff may extend, upon request by UBS, the procedural date set forth in paragraph 12 above for good cause shown. Deadlines for the procedural date set forth in paragraph 12 above shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

#### **UBS's Remedial Efforts**

15. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by UBS, its undertaking and cooperation afforded the Commission staff.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Section 15(b)(4) of the Exchange Act, and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

A. Respondent UBS cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

B. Respondent UBS is censured.

C. Respondent UBS shall, within 30 days of the entry of this Order, pay a civil money penalty of \$3,500,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent UBS may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent UBS may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent UBS may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying UBS Financial Services Inc. as a Respondent in these proceedings, and the file number of these

proceedings. A copy of the cover letter and check or money order must be simultaneously sent to Valerie A. Szczepanik, Assistant Regional Director, New York Regional Office, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022, or such other person or address as the Commission staff may provide.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in these proceedings. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in these proceedings.

By the Commission.

Brent J. Fields

Secretary