

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 89348 / July 20, 2020**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19886**

**In the Matter of**

**UBS FINANCIAL SERVICES  
INC.**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTIONS 15(b), 15B(c)  
AND 21C OF THE SECURITIES  
EXCHANGE ACT OF 1934, 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 Sections 15(b), 15B(c) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against UBS Financial Services Inc. (“Respondent” or “UBS”).

**II.**

In anticipation of the institution of these proceedings, Respondent 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, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b), 15B(c) and 21C of the Securities Exchange Act of 1934, 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 Respondent's Offer, the Commission finds<sup>1</sup> that:

#### Summary

This matter involves UBS Financial Services Inc.'s ("UBS") violation of certain rules of the Municipal Securities Rulemaking Board ("MSRB") and failure reasonably to supervise certain registered representatives and a member of its municipal bond syndicate desk in connection with retail order periods for negotiated new issue municipal bonds. Between August 2012 and June 2016 (the "relevant period"), UBS violated retail order period restrictions in new issue municipal bond offerings it distributed by allocating bonds intended for retail customers to certain customers that were known in the bond industry as "flippers." The flippers obtained allocations of negotiated new issue bonds from UBS and then immediately resold or "flipped" the bonds to other broker-dealers at a profit. During the relevant period, UBS improperly allocated bonds to the flippers on hundreds of retail orders when those flippers were not eligible for retail priority. In addition, UBS, through certain registered representatives, improperly obtained negotiated new issue bonds for UBS's inventory by placing indications of interest with the flippers who then placed customer orders with the underwriting syndicate, instead of UBS submitting dealer orders directly with the syndicate on its own behalf. This practice circumvented the priority of orders and improperly gave UBS access to a higher priority in the bond allocation process.

As a result of this conduct, UBS violated MSRB Rules G-11(k) and G-17. In addition, UBS violated MSRB Rule G-27, and failed reasonably to supervise, within the meaning of Section 15(b)(4)(E) of the Exchange Act, their registered representatives with respect to their violations of the federal securities laws and MSRB rules. UBS also violated Section 15B(c)(1) of the Exchange Act.

#### Respondent

1. **UBS Financial Services Inc.** ("UBS"), incorporated in Delaware and headquartered in Weehawken, New Jersey, is registered with the Commission as a broker-dealer and investment adviser. It is a subsidiary of UBS AG.

#### Other Relevant Entities and Individuals

2. **Core Performance Management, LLC ("CPM")** was a Florida limited liability company located in Boca Raton, Florida that dissolved on July 27, 2016. During the relevant period, CPM primarily bought and sold new issue municipal bonds. It was not registered with the Commission. The Commission filed an enforcement action against CPM in August 2018.<sup>2</sup>

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> *SEC v. Core Performance Management, LLC, et al.*, 18-CV-81081-BB (S.D. Fla., filed Aug. 14, 2018) (settled action against CPM and five associated individuals for acting as unregistered brokers and for engaging in fraudulent practices in connection with flipping new issue municipal bonds).

3. **RMR Asset Management Company (“RMR”)** was a California corporation with its principal place of business in Chula Vista, CA. RMR primarily bought and sold new issue municipal bonds. RMR was never registered with the Commission. The Commission filed an enforcement action against RMR and its associates in August 2018.<sup>3</sup>

4. **William S. Costas (“Costas”)**, age 55, resides in Oak Park, California. From 1991 to the present, Costas has served as a registered representative at UBS, and from 1995 to the present as an investment adviser representative at UBS, buying and selling municipal bonds and other securities for his customers. Costas has Series 7 and 63 licenses. The Commission instituted an enforcement action against Costas in July 2020.<sup>4</sup>

5. **John J. Marvin (“Marvin”)**, age 59, resides in North Palm Beach, Florida. From 2007 to the present, Marvin has served as a registered representative and investment adviser representative at UBS, buying and selling municipal bonds and other securities for his customers. Marvin has Series 7 and 63 licenses. The Commission instituted an enforcement action against Marvin in July 2020.<sup>5</sup>

6. **Jerry E. Orellana (“Orellana”)**, age 43, resides in Paramus, New Jersey. From 2013 to May 2019, he served as an Executive Director and Municipal Bond Trader at UBS. From April 2015 to June 2016, Orellana also worked on the UBS syndicate desk on new issue municipal bond offerings distributed by UBS. During the relevant period, Orellana held Series 7, 53, and 63 licenses. The Commission instituted an enforcement action against Orellana in April 2020.<sup>6</sup>

7. **Chris D. Rosenthal (“Rosenthal”)**, age 56, previously served as a registered representative, investment adviser representative, and Senior Vice President at UBS, buying and selling municipal bonds and other securities for his customers. The Commission instituted an enforcement action against Rosenthal in December 2018.<sup>7</sup>

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<sup>3</sup> *SEC v RMR Asset Management Company, et al.*, 3:18-CV-01895-AJB-JMA (S.D. Cal., filed Aug. 14, 2018) (partially settled action against RMR and 13 associated individuals for acting as unregistered brokers and, as to 10 of them, for engaging in fraudulent practices in connection with flipping new issue municipal bonds).

<sup>4</sup> *In the Matter of William S. Costas*, Exch. Act Rel. No. 89346 (July 20, 2020) (settled administrative proceeding for violations of MSRB Rules G-11(k) and G-17).

<sup>5</sup> *In the Matter of John J. Marvin*, Exch. Act Rel. No. 89347 (July 20, 2020) (settled administrative proceeding for violations of MSRB Rules G-11(k) and G-17).

<sup>6</sup> *In the Matter of Jerry E. Orellana*, Exch. Act Rel. No. 88784 (Apr. 30, 2020) (settled administrative proceeding for violations of MSRB Rules G-11(k) and G-17).

<sup>7</sup> *In the Matter of Chris D. Rosenthal*, Exch. Act Rel. No. 84841 (Dec. 18, 2018) (settled administrative and cease-and-desist proceeding for violations of Section 17(a)(1) and (a)(3) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, MSRB Rule G-11(b), G-11(k), and G-17, and for causing violations of Section 15(a) of the Exchange Act).

## **Background on Negotiated Offerings of Municipal Bonds**

8. Municipalities often raise money by issuing bonds that are sold to the public through an underwriting process. In what is known as a “negotiated” offering, the municipal issuer chooses a broker-dealer to act either as the sole underwriter or as the senior manager of an underwriting syndicate. An underwriting syndicate is a group of broker-dealers that join together to purchase new issue bonds from the issuer and distribute those bonds to the public. In addition, certain broker-dealers distribute new issue bonds pursuant to distribution agreements with members of the underwriting syndicate.

9. Bonds in negotiated offerings are offered for sale during designated “order periods,” which are windows of time during which the underwriters solicit orders from potential investors. Underwriters market offerings by distributing electronic “pricing wires” to their own customers as well as to other broker-dealers, who may be interested in purchasing bonds for their inventory. The pricing wires describe the bonds being offered as well as applicable rules for the offering, including the “priority of orders,” which establishes the sequence in which bonds will be allocated to specific order types, if the issuer chooses to establish such a priority. The priority of orders is set by the issuer and may vary by issuer. The priority of orders is important to potential purchasers because orders for bonds in a primary offering often exceed the amount of bonds available. Where retail is included as part of the priority of orders, those orders from individual retail investors have the highest priority. Issuers that choose to prioritize retail orders do so to maximize the volume of bonds placed with individuals who will buy and hold the bonds rather than quickly re-trade their bonds. Retail investors may also reside in the issuer’s jurisdiction and therefore benefit from state- or locality-specific tax advantages. Issuers often require the submission of zip codes with retail orders as a way to verify that the customer is a resident of the issuer’s jurisdiction.

10. An issuer may specify separate order periods for different categories of customers, typically by holding an initial retail order period for retail customers and a subsequent institutional order period for institutional customers. Often there is only one order period, with priority given to retail orders during that period. Pricing wires typically contain issuer-approved rules stating who is eligible to participate in the retail order period or to receive retail order priority. Pricing wires also commonly state that “stock orders are not permitted to be entered during the retail order period.” “Stock orders” refer to orders from broker-dealers attempting to purchase bonds for their own inventory. Stock orders are permitted during subsequent institutional order periods, but issuer priority rules generally require underwriters to give stock orders lower priority than retail or institutional customer orders. Because stock orders generally have lower priority than customer orders, orders from broker-dealers (or traders acting on their behalf) often go unfilled.

11. During the relevant period, UBS did not act as an underwriter or a member of an underwriting syndicate. Instead, it entered into distribution agreements with other broker-dealers who did serve as members of the underwriting syndicate. UBS’s “syndicate desk” handled orders for new issue municipal bonds that UBS sold to its customers under these distribution agreements. The distribution agreements in effect during the relevant period required UBS to offer and sell securities in compliance with certain offering restrictions, and to confirm that each order on behalf

of a retail customer was a *bona fide* retail order (*i.e.*, an order that met the requirements for “retail” as defined by the issuer).

**Certain UBS Registered Representatives Submitted Improper Retail Orders in Primary Offerings of Municipal Bonds and Facilitated UBS’s Purchase of Bonds from Flippers**

12. During the relevant period, UBS improperly allocated bonds to flippers on hundreds of retail orders from CPM and RMR for new issue bonds distributed by UBS. CPM and RMR maintained multiple customer accounts at UBS which were opened at different branches with different UBS registered representatives. Rosenthal was the UBS registered representative for multiple CPM and RMR-related flippers, with dozens of accounts for individual flippers and their entities. Marvin and Costas were each the registered representative for a different CPM-related flipper account. Each registered representative placed orders for new issue bonds on behalf of CPM or RMR with UBS’s syndicate desk.<sup>8</sup> For part of the relevant period, Orellana worked on the UBS syndicate desk and was responsible for accepting orders from UBS registered representatives on behalf of their customers, and submitting those orders to members of the underwriting syndicate in offerings distributed by UBS.

13. Between August 2012 and May 2016, Rosenthal submitted the majority of ineligible retail orders on behalf of CPM and RMR, when he knew, or was reckless in not knowing, those orders did not qualify for retail priority. Rosenthal knew CPM and RMR were engaged in flipping new issue municipal bonds. Rosenthal often included zip codes with the retail orders for CPM and RMR that were not associated with the relevant CPM or RMR account. Rosenthal would either receive the fraudulent zip code from CPM and RMR, or, in some instances, would look up a zip code on his own that would meet the issuer’s definition of retail priority.

14. Between April 2015 and June 2016, Marvin submitted ineligible retail orders on behalf of CPM. Marvin understood that CPM traded new issue municipal bonds and on at least two occasions Marvin described CPM in written communications as a “flipper.” Marvin submitted inaccurate zip codes with some of those retail orders so that the orders would receive the highest retail priority. Marvin negligently submitted those inaccurate zip codes with CPM’s orders when he should have known that they did not correspond to CPM’s account.

15. During April and May of 2016, Costas submitted ineligible retail orders on behalf of an associate of CPM. Costas was aware that his customer was flipping new issue bonds. Nevertheless, Costas submitted orders during retail order periods for CPM, and some of those orders included zip codes that were not associated with his customer’s account. Costas negligently submitted those inaccurate zip codes with the retail orders when he should have known that they did not correspond to his customer’s residence.

16. Between April 2015 and June 2016, Orellana, who worked on the UBS syndicate desk, submitted some of the retail orders from Costas, Marvin and Rosenthal to syndicate

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<sup>8</sup> Costas, Marvin, and Rosenthal worked in different branches of UBS in California, Florida, and Ohio, respectively.

members when he should have known those orders were ineligible for retail priority. Orellana understood that flipper orders generally did not qualify for retail priority. The UBS registered representatives who submitted orders on behalf of CPM and RMR often represented to Orellana (and others at UBS) that the orders were *bona fide* retail orders, and either concealed or did not disclose the fact that their customers were flippers. Nevertheless, Orellana understood that the flipper customer of a UBS registered representative whose orders were submitted for retail priority was in the business of buying and immediately reselling bonds, because Orellana had occasionally traded with that customer in 2012 and 2014 when Orellana was a UBS bond trader. Orellana also had reason to know that, prior to his time on the UBS syndicate desk, another UBS registered representative had submitted at least one retail order on behalf of his flipper customer. As a result, Orellana should have known that some of the orders he received from these UBS registered representatives did not qualify for retail priority. On a few occasions, Orellana provided zip codes not associated with the UBS customer's account and submitted it with the customer's retail order to the underwriting syndicate.

17. During the relevant period, UBS made a profit of approximately \$1.54 million from allocations of new issue bonds to CPM and RMR.

18. In addition, Rosenthal and Costas facilitated improper trades with flippers where UBS acquired bonds for its inventory. Broker-dealers seeking to purchase new issue bonds for their own inventory are required to submit "stock orders," which generally have a lower priority than customer orders and often are not filled. UBS registered representatives placed UBS's indications of interest with the flippers when they knew or should have known that the flippers would, in turn, place the orders as a purported "customer" of the underwriting firm offering the bonds. Once the flippers had obtained the new issue bonds, they immediately sold (or "flipped") the bonds to UBS, typically at a set mark-up price. During the relevant period, UBS obtained new issue bonds for its inventory through CPM and RMR approximately 2,382 times. This practice circumvented the priority of orders and improperly gave UBS higher priority in the bond allocation process. Rosenthal facilitated the vast majority of trades between UBS traders and CPM and RMR, and helped UBS traders acquire bonds through those flippers both in bond offerings distributed by UBS, and in offerings in which UBS was not participating. Costas helped UBS traders improperly obtain new issue municipal bonds in offerings in which UBS was not participating in the underwriting. During the relevant period, UBS made a profit of \$5.2 million from reselling bonds that it had obtained through CPM and RMR.

### **UBS's Policies and Procedures**

19. UBS's written supervisory procedures ("WSPs") did not address retail order period restrictions to comply with federal securities laws and applicable MSRB rules. UBS lacked policies and procedures to verify the retail eligibility of customer orders or the accuracy of zip codes. Under these circumstances, UBS failed to establish policies and procedures that would reasonably be expected to prevent and detect violations by Costas, Marvin, Orellana, and Rosenthal.

20. Similarly, UBS's WSPs did not address evasion of issuers' priority rules in new issue bond offerings to comply with federal securities laws and applicable MSRB rules when UBS bought new issue bonds for its inventory. UBS lacked policies and procedures with respect to how its registered representatives were to submit orders for UBS's account when UBS was not part of the underwriting syndicate. Under these circumstances, UBS failed to establish policies and procedures reasonably designed to prevent and detect violations by Rosenthal and Costas relating to evasion of issuers' priority provisions.

### Legal Discussion

#### UBS Failed Reasonably to Supervise and to Establish an Adequate Supervisory System

21. Section 15(b)(4)(E) of the Exchange Act authorizes the Commission to impose sanctions against a broker-dealer for failing reasonably to supervise a person subject to the firm's supervision who committed a securities law violation. A broker-dealer can be liable for failure to supervise either when it lacks procedures reasonably designed to prevent and detect the underlying violation, *see, e.g., Smith Barney, Harris Upham & Co.*, Exch. Act Release No. 21813, 1985 WL 548567, at \*3 (Mar. 5, 1985), or when it has failed to adopt a reasonable system to implement those procedures. *See, e.g., A.G. Edwards & Sons, Inc.*, Exch. Act Release No. 55692, 2007 WL 1285761, at \*4 (May 2, 2007). MSRB Rule G-27(a) obligates brokers, dealers, and municipal securities dealers to "supervise the conduct of the municipal securities activities of the firm and its associated persons to ensure compliance with [MSRB] rules and the applicable provisions of the [Exchange] Act and rules thereunder." MSRB Rule G-27(b) obligates brokers, dealers, and municipal securities dealers to establish and maintain a system to supervise the municipal securities activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws, regulations and MSRB rules.

22. UBS failed to establish policies and procedures that reasonably would be expected to prevent and detect the violations by Costas, Marvin, and Orellana, who were each its associated persons, of MSRB Rules G-11(k) and G-17 in connection with their new issue municipal bond activities. UBS also failed to establish policies and procedures that reasonably would be expected to prevent and detect the violations by Rosenthal, who was its associated person, of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, MSRB Rules G-11(b), G-11(k), and G-17. In addition, UBS failed to supervise the municipal securities activities of Costas, Marvin, Orellana and Rosenthal to ensure compliance with MSRB rules, and UBS lacked a system that was reasonably designed to achieve compliance with MSRB Rules G-11(k) and G-17.

23. As a result, UBS failed reasonably to supervise within the meaning of Section 15(b)(4)(E) of the Exchange Act and willfully<sup>9</sup> violated MSRB Rule G-27.

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<sup>9</sup> "Willfully," for purposes of imposing relief under Sections 15(b) and 15B of the Exchange Act, "means no more than 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." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the

### UBS Violated MSRB Rule G-17

24. MSRB Rule G-17 provides that, in the conduct of its municipal securities business, every broker, dealer, municipal securities dealer, and municipal advisor shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice. Negligence is sufficient to establish a violation of MSRB Rule G-17. *See Wheat, First Securities, Inc.*, Exch. Act Rel. No. 48378, 80 SEC Docket 3406, 3425 (Aug. 20, 2003).

25. During the relevant period, as discussed above, UBS, through Costas, Marvin, and Rosenthal, submitted orders to the UBS syndicate desk (and ultimately to the senior syndicate manager by Orellana) as eligible retail orders when they knew or should have known that those orders were not eligible for retail priority, and by providing inaccurate zip codes with some of those orders.

26. In addition, UBS, through Rosenthal and Costas, circumvented the priority provisions of new issue bond offerings by acquiring bonds from CPM and RMR on behalf of UBS traders who were seeking to purchase bonds for UBS inventory.

27. Through the conduct described above, UBS willfully violated MSRB Rule G-17.

### UBS Violated MSRB Rule G-11(k)

28. MSRB Rule G-11(k) provides that each broker, dealer, or municipal securities dealer that submits an order during a retail order period to the senior syndicate manager or sole underwriter, as applicable, shall provide in writing the following information relating to each order designated as retail submitted during a retail order period: (i) whether the order is from a customer that meets the issuer's eligibility criteria for participation in the retail order period; (ii) whether the order is one for which a customer is already conditionally committed; (iii) whether the broker, dealer, or municipal securities dealer has received more than one order from such retail customer for a security for which the same CUSIP number has been assigned; (iv) any identifying information required by the issuer, or the senior syndicate manager on the issuer's behalf, in connection with such retail order (but not including customer names or social security numbers); and (v) the par amount of the order.<sup>10</sup>

29. UBS, through Costas, Marvin, and Rosenthal, submitted orders to the UBS syndicate desk (and ultimately to the senior syndicate manager by Orellana) which were improperly designated as retail orders because they did not meet the issuer's retail eligibility

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showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

<sup>10</sup> Rule G-11(k) further provides that the senior syndicate manager may rely on the information furnished by each broker, dealer, or municipal securities dealer that provided the information required by (i) - (v) unless the senior syndicate manager knows, or has reason to know, that the information is not true, accurate, or complete.



criteria. In addition, those registered representatives provided inaccurate identifying information (zip codes) required by the issuer, or the senior syndicate manager on the issuer's behalf, in connection with some of those orders.

30. Through the conduct described above, UBS willfully violated MSRB Rule G-11(k).

UBS Violated Section 15B(c)(1) of the Exchange Act

31. Section 15B(c)(1) of the Exchange Act prohibits brokers, dealers, and municipal securities dealers from using the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase and sale of, any municipal security in contravention of any MSRB Rule.

32. As a result of the negligent conduct described above and its willful violations of MSRB Rules G-11(k), G-17 and G-27, UBS willfully violated Section 15B(c)(1) of the Exchange Act.

**UBS's Remedial Efforts**

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by UBS. UBS has taken a number of remedial steps, including reviewing and improving its retail order period policies and procedures, introducing retail order period training for registered representatives and other employees whose work relates to municipal bond trading, enhancing monitors and controls for the retail order period, and revising its account opening and client verification procedures. In addition, during the relevant period, UBS took steps to restrict delivery-versus-payment ("DVP") accounts, which were typically used by the flippers, from receiving negotiated new issue municipal bond allocations.

**IV.**

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

Accordingly, pursuant to Sections 15(b), 15B(c) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent UBS cease and desist from committing or causing any violations and any future violations of Section 15B(c)(1) of the Exchange Act and MSRB Rules G-11(k), G-17, and G-27.

B. Respondent UBS is censured.

C. Respondent shall, within 10 days of the entry of this Order, pay disgorgement of \$6,740,000 and prejudgment interest of \$1,549,336 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section

21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

D. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$1,750,000 to the Securities and Exchange Commission, of which \$525,000 shall be transferred to the Municipal Securities Rulemaking Board in accordance with Section 15B(c)(9)(A) of the Exchange Act, and of which the remaining \$1,225,000 shall be transferred to the general fund of the United States Treasury in accordance with Section 21F(g)(3) of the Exchange Act. If timely payment of the civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

E. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent 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 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 sent to Ivonia K. Slade, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

F. 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 this proceeding. 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 this proceeding.

By the Commission.

Vanessa A. Countryman  
Secretary