

STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

In the Matter of)
UBS FINANCIAL SERVICES, INC.,) Docket no. 13-025-S
Respondent.) **CONSENT ORDER**

WHEREAS, UBS Financial Services, Inc. ("UBS") is a broker-dealer registered in the state of Vermont, with a Central Registration Depository ("CRD") number of 8174; and

State securities regulators, as part of a North American Securities Administrators Association ("NASAA") working group (the "NASAA Working Group"), have conducted an investigation into the registration of UBS Client Service Associates ("CSAs") and UBS's supervisory system with respect to the registrations of CSAs; and

UBS has cooperated with state securities regulators and the NASAA Working Group conducting the investigation by responding to inquiries, providing documentary evidence and other materials, and providing access to facts relating to the investigations; and

UBS has advised the NASAA Working Group of its agreement to resolve the investigation pursuant to the terms specified in this Consent Order (the "Order") and pursuant to the multi-state resolution recommended by the NASAA Working Group; and

UBS has made certain changes in its supervisory system with respect to the registration of CSAs, and will make certain payments in accordance with the terms of this Order; and

UBS elects to waive permanently any right to a hearing and appeal under 9 V.S.A. Chapter 150, the Vermont Uniform Securities Act ("VUSA"), and 3 V.S.A. Chapter 25, the Vermont Administrative Procedure Act, with respect to this Order; and

Solely for the purpose of terminating the NASAA working group investigation, and in settlement of the issues contained in this Order, UBS, without admitting or denying the findings of fact or conclusions of law contained in this Order, consents to the entry of this Order.

1 NOW, THEREFORE, the Commissioner, as administrator of the VUSA, hereby enters this
2 Order:

3 I.

4 **FINDINGS OF FACTS**

5 1. UBS admits the jurisdiction of the Commissioner in this matter.

6 Background on Client Service Associates

7 2. The CSAs function as sales assistants and typically provide administrative and sales
8 support to one or more of UBS's Financial Advisors ("FAs"). There are different titles within the
9 CSA position, including Client Service Associate, Registered Client Associate, and Senior
10 Registered Client Service Associate.

11 3. The responsibilities of CSAs specifically include, among other things:

- 12 a. Extending invitations to UBS-sponsored events;
- 13 b. Providing published quotations to clients, if asked;
- 14 c. Inquiring whether a current or prospective client wishes to discuss investments with
15 a registered representative of UBS; and
- 16 d. Entering an order, provided the order was accepted by an appropriately registered
17 individual in those instances where the CSA is not registered in the state in which
18 the client is located.

19 4. In addition to the responsibilities described above, and of particular significance to this
20 Order, some CSAs are permitted to accept orders from clients. As discussed below, UBS's written
21 policies and procedures require that any CSAs accepting client orders first obtain the necessary
22 licenses and comply with self-regulatory organization and state registration requirements.

23 5. UBS issued a revised policy on registration requirements on March 28, 2007, which
24 stated, inter alia, that managers are responsible for ensuring that all employees under their
25 supervision are appropriately registered and licensed to perform the functions of their position.

26 6. During the period of 2004 to 2010, UBS employed, on average, approximately 2,277
CSAs per year.

1 Registration Required

2 7. The Provisions of 9 V.S.A. § 5402 provide the requirements for the registration of
3 agents to engage in the sale of securities.

4 8. Pursuant to the general prohibition under 9 V.S.A. § 5402(a), as cited to generally in
5 paragraph 7 above, it is unlawful for an individual to transact business (including accepting
6 unsolicited orders) as an agent in Vermont without being registered as an agent, unless the
7 individual is exempt from registration requirements under subsection (b). And pursuant to
8 subsection (d) it is unlawful for a broker-dealer to employ or associate with an agent who transacts
9 business in the state unless the agent is registered or is exempt from registration under subsection
10 (b). The exemptions listed under subsection (b) do not apply in this case. Therefore agent
11 registration of CSAs who accepted orders was and is required under the VUSA.

12 9. Pursuant to 9 V.S.A. §§ 5402, 5412(c), (d) and 5604, the Commissioner may impose a
13 civil penalty to a broker-dealer for selling securities in Vermont through agents other than
14 registered agents and for failing to supervise those agents.

15 UBS Requires Registration of Client Service Associates

16 10. UBS requires CSAs to become properly registered, licensed, and appointed with the
17 necessary self-regulatory organizations, state regulators, and business entities before taking
18 solicited or unsolicited transaction orders from clients in securities or other financial products,
19 receiving transaction-related compensation, or otherwise engaging in the offer or sale of securities
20 or other financial products.

21 11. UBS's policies and procedures state that CSAs engaging in securities activities must
22 register in, at a minimum, the state from which they conduct business (i.e. home state).

23 12. Additionally, UBS also required CSAs to register in states in which a CSA anticipated:

- 24 a. Maintaining an additional place of business;
- 25 b. Prospecting clients;
- 26 c. Soliciting new accounts;
- d. Servicing existing accounts; or

- 1 e. Effecting any securities transactions and/or receiving compensation as a result of
2 such transactions.

3 Regulatory Investigation and Findings

4 13. In March 2010, state securities regulators initiated an investigation into the practices of
5 UBS in connection with its CSA registrations.

6 14. The multi-state investigation focused on systemic issues with UBS's CSA registrations
7 and related supervisory structure instead of attempting to identify each incidence of unregistered
8 activity. Specifically, with respect to the order entry process, the investigation found:

- 9 a. After accepting a client order, UBS CSAs accessed UBS's automated Consolidated
10 Order Entry System ("COE") to enter the order;
- 11 b. When entering an order through the COE, CSAs were asked by the system "Did
12 another person receive this order?" If the question was answered "no," the order
13 was processed. If the question was answered "yes," a free text field appeared for
14 the CSA to enter the name or employee code of the person who accepted the order;
- 15 c. In some instances, when this question was answered "yes," CSAs did not include a
16 name or code of the employee who accepted the order in the free text field. In other
17 instances, the free text field did not contain accurate identifying information about
18 the employee who accepted the trade;
- 19 d. Further, while UBS maintained a system to verify that the FA of record for a
20 particular account was registered in the state where the client resided, UBS did not
21 maintain a system to verify the registration status of the employee accepting a client
22 order when that employee was not the FA for the account.

23 15. The multi-state investigation found that on certain occasions some UBS CSAs, while
24 Series 7 registered and registered in one or more other states, accepted unsolicited orders to buy or
25 sell securities from clients residing in Vermont at times when the CSAs were not appropriately
26 registered in Vermont.

1 UBS's Remedial Measure and Cooperation

2 16. In November 2010, after the initial inquiry by state securities regulators, UBS enhanced
3 the COE System to automatically validate the registration of employees during the order entry
4 process.

5 17. Specifically with respect to branch support staff (i.e. CSAs), employees are now
6 required to indicate the person who directly accepted the order from a client by selecting "self" or
7 "other" within the electronic ticket on the COE.

8 18. If a CSA selects "self", the COE validates whether the CSA who accepted the order is
9 properly registered in the state where the client resides.

10 19. If a CSA selects "other," the CSA must provide identifying information of the person
11 who accepted the order. The COE system subsequently validates whether the identified person
12 who accepted the order is properly registered in the state where the client resides.

13 20. If the identified person is not properly registered in the client's state of residence, the
14 order is routed to branch management who must ensure that a properly registered person accepts or
15 confirms the order before execution.

16 21. UBS provided timely responses and substantial cooperation in connection with this
17 regulatory investigation.

18 **II.**

19 **CONCLUSIONS OF LAW**

20 1. The Commissioner has jurisdiction over this matter pursuant to the VUSA.

21 2. UBS's failure to establish an adequate system to monitor the registration status of
22 persons accepting client orders constitutes violations for failure to establish a reasonably designed
23 supervisory system and/or failure to establish, maintain, and enforce reasonably designed
24 procedures pursuant to 9 V.S.A. § 5412(d)(9).

25 3. UBS's maintenance of order tickets which do not accurately identify the person who
26 accepted client orders constitutes violations for failure to maintain all books and records required to

1 be kept by the Securities and Exchange Commission or the state agency pursuant to 9 V.S.A.
2 §5411.

3 4. UBS's acceptance of orders for purchases and sales of securities from clients
4 residing in Vermont through CSAs not registered in Vermont constitute violations of 9 V.S.A.
5 §5402(d) for use/employment of unregistered agents/sales representatives.

6 5. Pursuant to 9 V.S.A. §§ 5402, 5411, 5412, 5604, UBS's acceptance of orders for
7 purchases and sales of securities in Vermont through agents not registered in Vermont constitute
8 bases to order UBS to cease and desist engaging in the sale of securities in Vermont through
9 unregistered agents.

10 6. Pursuant to 9 V.S.A. §§ 5412 and 5604, the violations described above constitute
11 bases for the assessment of an administrative penalty against UBS.

12 7. The Commissioner finds the following relief appropriate and in the public interest.

13
14 **III.**

15 **ORDER**

16 On the basis of the Findings of Facts, Conclusions of Law, and UBS's consent to the entry of
17 this Order,

18 **IT IS HEREBY ORDERED:**

19 1. This Order concludes the investigation by the Commissioner and any other action that
20 the Commissioner could commence against UBS and its officers, directors and present or former
21 employees under applicable Vermont law on behalf of Vermont as it relates to unregistered activity in
22 Vermont by UBS's CSAs and UBS's supervision of CSA registrations during the period from January
23 1, 2004 through December 31, 2010.

24 2. This Order is entered into solely for the purpose of resolving the referenced multi-
25 state investigation, and is not intended to be used for any other purpose. For any person or entity
26 not a party to the Order, this Order does not limit or create any private rights or remedies against

1 UBS including, limit or create liability of UBS, or limit or create defenses of UBS, to any claims.

2 3. UBS is hereby ordered to comply with the Undertakings contained herein.

3 4. UBS is hereby ordered to cease and desist from engaging in the acceptance of orders
4 for purchases and sales of securities in Vermont through persons not registered with the Vermont
5 Department of Financial Regulation as agents of UBS.

6 5. UBS is hereby ordered to pay the sum of **\$63,631.24** to the **Vermont Department**
7 **of Financial Regulation** within ten days of the date of this Order. The monies received by the
8 Department pursuant to this paragraph may be used, in accordance with Vermont law, to reimburse
9 the Department for costs incurred during the investigation of this matter, for securities and investor
10 education, and/or for other securities and investor protection purposes, at the sole discretion of the
11 Commissioner.

12 6. This order is not intended by the Commissioner to subject any Covered Person to
13 any disqualifications under the laws of the United States, any state, the District of Columbia,
14 Puerto Rico, or the U.S. Virgin Islands, or under the rules or regulations of any securities or
15 commodities regulator or self-regulatory organization, including, without limitation, any
16 disqualification from relying upon the state or federal registration exemptions or safe harbor
17 provisions. "Covered Person," means UBS or any of its affiliates and their current or former
18 officers or former officers, directors, employees, or other persons that could otherwise be
19 disqualified as a result of the Orders (as defined below).

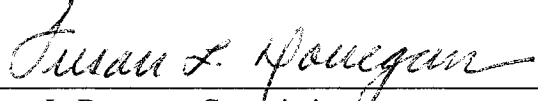
20 7. This Order and the order of any other State in any proceeding related to UBS's
21 agreement to resolve the above referenced multi-state investigation (collectively, the "Orders")
22 shall not disqualify any Covered Person from any business that they otherwise are qualified,
23 licensed or permitted to perform under applicable securities laws or regulations of Vermont and
24 any disqualifications from relying upon this state's registration exemptions or safe harbor
25 provisions that arise from the Orders are hereby waived.

26 8. This Order shall be binding upon UBS and its successors and assigns as well as to
successors and assigns of relevant affiliates with respect to all conduct subject to the provisions

1 above and all future obligations, responsibilities, undertakings, commitments, limitations,
2 restrictions, events, and conditions.

3
4 Dated this 19th day of September, 2013.

5
6 **BY ORDER OF THE COMMISSIONER**

7 

8 _____
9 Susan L. Donegan, Commissioner
10 Vermont Department of Financial Regulation

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 **CONSENT TO ENTRY OF CONSENT ORDER BY UBS FINANCIAL SERVICES, INC.**

2 UBS hereby acknowledges that it has been served with a copy of this Consent Order
3 ("Order"), has read the foregoing Order, is aware of its right to a hearing and appeal in this matter, and
4 has waived the same.

5 UBS admits the jurisdiction of the Commissioner of the Vermont Department of Financial
6 Regulation, neither admits nor denies the Findings of Facts and Conclusions of Law contained in this
7 Order and consents to entry of this Order by the Commissioner as settlement of the issues contained in
8 this Order.

9 UBS agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with
10 regard to any state, federal or local tax for any administrative monetary penalty that UBS shall pay
11 pursuant to this Order.

12 UBS states that no promise of any kind or nature whatsoever was made to it to induce it to
13 enter into this Order and that it has entered into this Order voluntarily.

14 Ilene Marquardt represents that he/she is Managing Director of UBS and that, as such,
has been authorized by UBS to enter into this Order for and on behalf of UBS.

15 Dated this 13 day of September, 2013.

16
17 UBS FINANCIAL SERVICES, INC.
18 By: Ilene Marquardt
19 Title: Managing Director

20
21 SUBSCRIBED AND SWORN TO before me this 13 day of September, 2013.

22 [Affix seal]

23 Elines Vlachos
24 Notary Public

25 My Commission expires:
8-12-14

26 ELINES VLACHOS
NOTARY PUBLIC OF NEW JERSEY
I.D. # 2228454
Commission Expires 8/12/2014

