UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95168 / June 29, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 6060 / June 29, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20912

In the Matter of

UBS FINANCIAL SERVICES INC.

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 203(e) AND 203(k) 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 Sections 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e) and 203(k) 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 Sections 15(b) of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) 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. These proceedings involve a complex investment strategy UBS marketed and sold to approximately 600 advisory clients between February 2016 and February 2017 ("Relevant Period") called the "Yield Enhancement Strategy" ("YES"). UBS offered YES through its platform of domestic financial advisors who, in turn, recommended it to their clients. UBS clients allocated approximately $2 billion in assets to the program during the Relevant Period. YES was intended to generate profits by using an existing portfolio of debt or equity securities as collateral to purchase and sell a combination of options on the S&P 500. YES had the potential to generate modest returns during periods of low market volatility; however, the strategy could -- and eventually did – suffer losses during periods of high market volatility.

2. UBS provided its financial advisors inadequate training or dedicated supervisory oversight in this complex options trading strategy during the Relevant Period, as a result certain of them did not understand the significant downside risk. UBS rolled out formal training and other enhanced supervisory controls after a comprehensive "front-to-back" review in early 2017. YES generated modest returns for the first couple of years when market volatility was low; however, the strategy began experiencing losses in early 2018 as market volatility began to increase and suffered a 13% loss in December 2018 and an 18% loss for calendar year 2018. Certain financial advisors and clients expressed surprise by these losses, and certain clients closed their YES accounts.

Respondent

3. UBS Financial Services Inc. (UBS) is dually registered with the Commission as a broker-dealer and investment adviser. UBS is a subsidiary of UBS AG, a global financial services firm headquartered in Zurich, Switzerland. UBS and UBS AG have been subject to prior enforcement proceedings involving the offer and sale of complex financial products and strategies to retail investors.

Facts

Background

4. YES is an options overlay strategy designed to generate income from an existing portfolio of securities and is managed on a discretionary basis. YES generally sells short term out-of-the-money European style put and call options on the S&P 500 and hedges those positions by purchasing below-market puts and above-market calls with the same duration – an options trading strategy known as an "Iron Condor." Clients participate in YES by pledging as collateral for those options trades a portfolio of existing securities held at UBS with a view towards enhancing returns on their existing portfolio. YES is a short volatility strategy and thus has the potential to generate modest returns during periods of low market volatility; however, unbeknownst to certain clients who opened YES accounts during the Relevant Period and certain UBS financial advisors who recommended YES during the Relevant Period, the strategy could -- and eventually did – suffer losses during periods of high market volatility.

5. YES is managed by a team of financial advisors located in New York City ("YES Team"). UBS recruited the YES Team from Credit Suisse Securities USA (Credit Suisse) in late 2015, paying them upfront awards of approximately $50 million. UBS also recruited a number of financial advisors from Credit Suisse. Collectively, the legacy Credit Suisse financial advisors brought to UBS approximately 300 client accounts with approximately $1 billion in YES. Legacy Credit Suisse financial advisors and clients generally understood the significant downside risks of YES. Most, if not all, nevertheless continued with the program given its successful track record at Credit Suisse.

Relevant Period

6. UBS opened YES to new clients in February 2016. The YES Team conducted roadshows at UBS's offices in California, Texas, and New York, among others, and pitched the strategy over the phone to financial advisors located across the country. The YES Team marketed the strategy as a way to enhance returns on an existing portfolio of securities. The YES Team generally explained to financial advisors and clients that historically the strategy had generated gains of approximately 3%-to-5% per year with worst-case historical losses of approximately 1% per year. The YES Team acknowledged that the strategy had experienced losses up to 11% in a single month but explained that this created a potential profit opportunity because they could try to sell options at premium prices, sometimes analogizing the program to writing "hurricane insurance." As a result of these efforts, the number of client accounts increased by approximately 600 and the amount invested in YES increased by approximately $2 billion during the Relevant Period.

7. UBS provided its financial advisors inadequate training in this complex options trading strategy during the Relevant Period. UBS recognized internally the importance of developing and implementing training to help ensure that financial advisors satisfied their fiduciary obligations including: (i) in an internal email on November 20, 2015, UBS included among "YES Post-Approval Conditions" that, "Training for referring FAs on the strategy to be built, delivered and tracked so they can effectively conduct their suitability obligations;" (ii) in an internal document entitled "Rules of the Road" dated July 2016, UBS described a requirement that financial advisors attest that they had read and completed training before opening a YES account for a client; and (iii) in an internal document entitled "Procedure Manual" dated December 15, 2016, UBS represented that, "Each Financial Advisor who is considering recommending the YES strategy to their clients must first complete the FA training for the YES strategy." Despite these internal acknowledgements, UBS provided financial advisors inadequate training during the Relevant Period.

8. Because there was no registration statement or other formal offering document associated with YES, financial advisors and clients were dependent on written materials prepared by UBS and documents associated with the account opening process. The first was a blast email prepared by the YES Team highlighting, among other things, that the strategy's "worst year was down 1.02%." The second was a 17-page slide deck. Beyond standard language along the lines of "[s]ignificant market moves either up or down may result in losses" and "[s]elling options involves a high degree of risk," none of the written materials provided further explanation of the downside risk of YES.

9. UBS provided investors with a Form ADV brochure when they opened a YES account. The Form ADV brochure disclosed in relevant part: "In order to enroll in the YES strategy, you will be required to select a 'Mandate' for the strategy. The Mandate amount is the amount of collateral you are willing to put at risk." UBS required that clients sign a variety of other account opening documents acknowledging their understanding that there was risk associated with the program and that they could lose money. Aside from these standard risk disclosures, neither the Form ADV brochure nor the investor account opening documents prepared by UBS further explained or quantified the downside risk of YES.

10. UBS calculated downside risk of YES on a daily basis for each client account. According to UBS's internal risk reports, YES's potential maximum losses generally ranged between 10% and 20% during the Relevant Period, as illustrated in the chart below. The internal risk reports were not shared with financial advisors or clients.

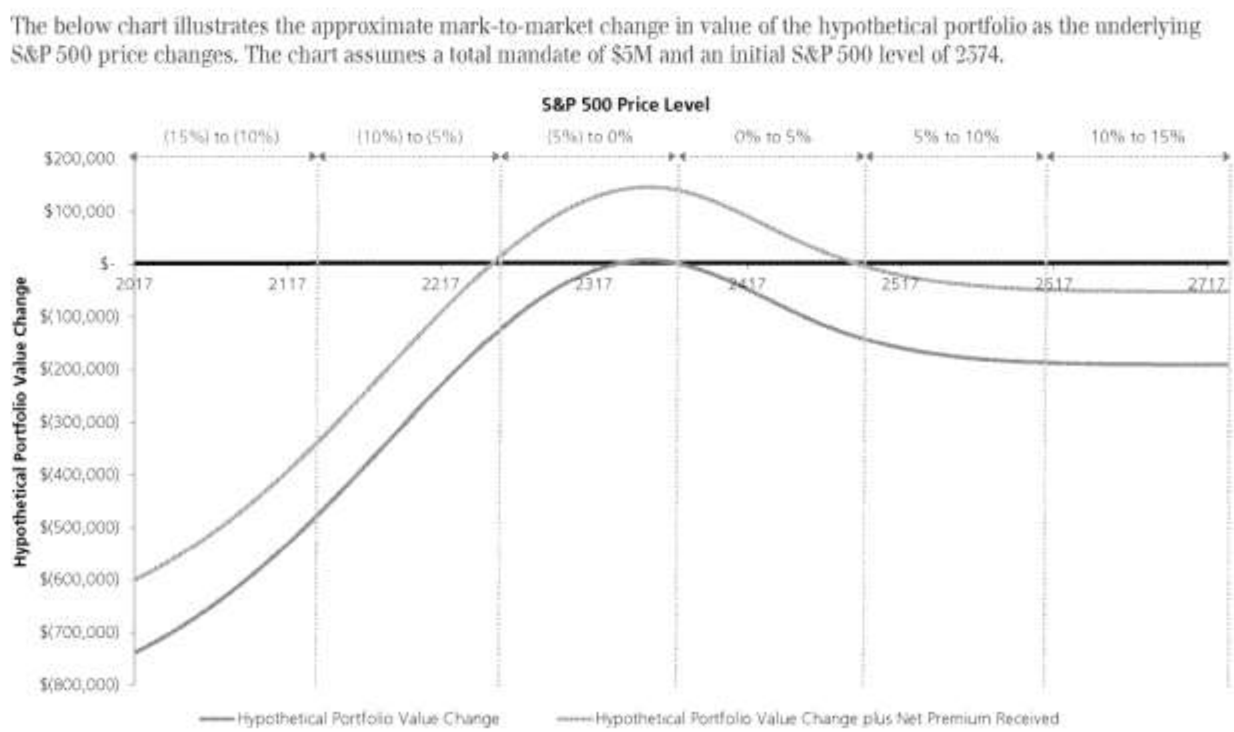
11. The significant downside risk of YES was illustrated in charts prepared daily by UBS showing what happened to the portfolio in the event the S&P 500 moved up or down. For example, according to a chart dated September 30, 2016, an approximately 12% drop in the market would result in an approximately 18% loss. These charts were included in internal risk reports but were not shared with financial advisors or clients.

12. Certain financial advisors and clients did not understand the significant downside risks of YES during the Relevant Period. Certain financial advisors understood from communications with the YES Team that the strategy could experience significant losses but believed that this created a profit opportunity under a hurricane insurance analogy. Certain clients who invested in YES during the Relevant Period would not have invested in YES had they known the significant downside risk, and believed their financial advisors would not have recommended YES had they appreciated those risks.

Front-To-Back Review

13. UBS hired an individual to head the dedicated supervisory group of the YES Team in February 2017 ("YES Supervisor"). UBS noted in an internal document dated February 1, 2017, that "Compliance has highlighted that the Complex and Division Management Teams do not have a full understanding of the YES Strategy and this could result in [] increased regulatory risk and poor supervision. The hiring of [the Yes Supervisor] should solve for this concern, given his compliance/management experience and good understanding of the strategy." The YES Supervisor noted in an internal document dated February 21, 2017, "[t]o be suitable, it is critical that a client understand the potential risk and rewards," "[t]here is a general concern as to how FAs other than YES team [,] market the strategy and what is communicated and recommended to clients" and that, "[t]raining of FAs and supervisors needs to be more direct and better documented . . . with an appropriate test to confirm understanding of the strategy and its associated risks and rewards."

14. UBS closed YES to new investment pending completion of a "front-to-back" review in March 2017. This review resulted in enhancements to the risk control framework around YES including the development and implementation of an online training module for financial advisors. The training program included the following slide illustrating the downside risk of YES by showing that a 10%-to-15% drop in the market could result in a 7%-to-12% loss to a hypothetical portfolio:

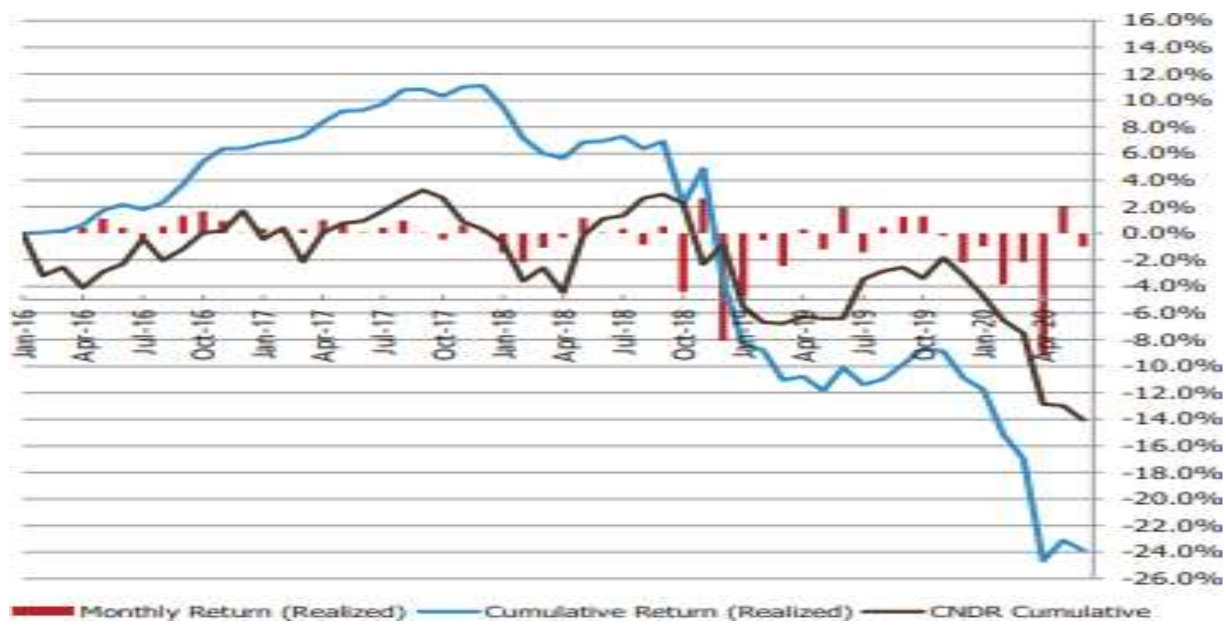


15. UBS analyzed the economics of the YES program during the "front-to-back" review. On average YES clients paid an advisory fee of 150 basis points (bps) annually which were split evenly between UBS (75 bps) and the YES Team and referring financial advisors (75

bps). According to UBS's contemporaneous analysis, net profit for the YES program during the Relevant Period was approximately $9.6 million. UBS's net profits on the 600 accounts opened during the Relevant Period was approximately $5.8 million.

Losses Materialize

16. YES client accounts began experiencing losses in early 2018 as market volatility began to increase. In December 2018, the S&P 500 fell 15% between December 2 and 25 before rallying to finish the month down 11%. The YES strategy suffered a 13% loss for the month of December and an 18% loss for calendar year 2018. Numerous financial advisors and clients expressed surprise about the size of these losses, and many clients closed their YES accounts. The YES strategy continued to suffer losses after the relevant period as illustrated below (through July 2020):



17. UBS was aware of the significant downside risk of the YES program. Despite that knowledge, UBS permitted its financial advisers to recommend YES to clients during the Relevant Period without providing adequate training in this complex options trading strategy or taking other reasonable steps to confirm that advisors understood those risks. As a result, certain financial advisers employed by UBS were unable to form a reasonable belief that the advice they provided during the Relevant Period was in the best interest of their clients.

* * *

18. As a result of the conduct described above, UBS willfully[1] violated Section 206(2) of the Advisers Act which makes it unlawful for any investment adviser, directly or indirectly, to "engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client." Scienter is not required to establish a violation of Section 206(2), but rather a violation may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194-95 (1963).

19. As a result of the conduct described above, UBS willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

Remedial Efforts

20. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent 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 UBS's Offer.

Accordingly, pursuant to Sections 15(b) of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. UBS cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) and Rule 206(4)-7 promulgated thereunder.

B. UBS is censured.

C. UBS shall pay disgorgement, prejudgment interest, and a civil monetary penalty totaling $24.6 million as follows:

(i) UBS shall pay disgorgement of $5.8 million plus prejudgment interest of $1.4 million for a total of $7.2 million, which shall be deemed satisfied by the payments previously made by UBS to investors in excess of that amount. The disgorgement and prejudgment interest ordered here are consistent with equitable principles and do not exceed UBS's net profits from its violations.

[1] "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 203(e) of the Advisers 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)).

(ii) UBS shall pay a civil monetary penalty in the amount of $17.4 million, consistent with the provisions of this Subsection C.

(iii) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the civil money penalties described above for distribution to Affected Investor Accounts. 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, UBS 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 its payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, UBS 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 UBS by or on behalf of one or more investors based on substantially the same facts as alleged in this Order.

(iv) Within ten (10) days of the issuance of this Order, UBS shall deposit $17.4 million (the "Fair Fund") into an escrow account at a financial institution not unacceptable to the Commission staff and UBS shall provide evidence of such deposit in a form acceptable to the Commission staff. The account holding the assets of the Fair Fund shall bear the name and the taxpayer identification number of the Fair Fund. If timely payment into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] and/or 31 U.S.C. §3717.

(v) UBS shall be responsible for administering the Fair Fund and may hire a professional at its own cost to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by UBS and shall not be paid out of the Fair Fund.

(vi) UBS shall distribute from the Fair Fund to each current or former Affected Investor Account an amount representing the Affected Investor Account's respective pro rata share of the Fair Fund, which share shall be based upon the percentage of aggregate Relevant Losses across all Affected Investor Accounts that is attributable to each individual Affected Investor Account. "Affected Investor Accounts" shall be limited to only those investor YES accounts opened during the Relevant Period excluding any YES accounts of customers who formerly held a YES account at Credit Suisse. For Affected Investor Accounts closed before December 31, 2018, "Relevant Losses" are calculated as the total net losses incurred in such Affected Investor Account, using a standard profit and loss damages model. For all other affected investor accounts, "Relevant Losses" are calculated based upon the total net losses incurred in such Affected Investor Account from account opening through December 31, 2018, using a standard profit and loss damages model. In all cases, the "Relevant Losses" shall be less any recoveries from arbitration proceedings and/or in settlement with UBS. This disbursement calculation (the "Calculation") will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection

C. The Calculation shall be subject to a *de minimis* threshold. No portion of the Fair Fund shall be paid to any Affected Investor Account in which UBS, or any of its current or former officers, directors or employees, has a financial interest.

(vii) UBS shall, within 90 days from the date of this Order, submit the Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, UBS shall make itself available, and shall require any third-parties or professionals retained by UBS to assist in formulating the methodology for its Calculation and/or administration of the distribution to be available, for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. UBS also shall provide the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to UBS's proposed Calculation or any of its information or supporting documentation, UBS shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within 10 days of the date that the Commission staff notifies UBS of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

(viii) UBS shall, within 30 days of the written approval of the Calculation by the Commission staff, submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to each Affected Investor Account. The Payment File should identify, at a minimum, (1) the name or account number of each Affected Investor Account; (2) the net amount of the payment to be made, less any tax withholding; and (3) the amount of any *de minimis* threshold to be applied. UBS shall exclude from the Payment File all payments to payees that appear on the U.S. Treasury Department Specially Designated Nationals List.

(ix) UBS shall disburse all amounts payable to customers associated with an Affected Investors Account within 90 days of the date the Commission staff accepts the Payment File, unless such time period is extended as provided in Paragraph (xiii) of this Subsection C. Respondent shall notify the Commission staff of the dates and the amount paid in the initial distribution.

(x) If UBS is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate any customer associated with an Affected Investor Account or a beneficial owner of the same or any other factors beyond UBS's control, UBS shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Exchange Act once the distribution of funds is complete and before the final accounting provided for in Paragraph (xii) of this Subsection C is submitted to the Commission staff. Payment must be made in one of the following ways:

a. UBS may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

b. 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

c. 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 as 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 Reid A. Muoio, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

(xi) A Fair Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§ 1.468B.1-1.468B.5. UBS agrees to be responsible for all tax compliance responsibilities associated with the Fair Fund's status as a QSF. These responsibilities involve reporting and paying requirements of the Fund, including but not limited to: (1) tax returns for the Fair Fund; (2) information return reporting regarding the payments to investors, as required by applicable codes and regulations; and (3) obligations resulting from compliance with the Foreign Account Tax Compliance Act (FATCA). Respondent may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by UBS and shall not be paid out of the Fair Fund.

(xii) Within 150 days after UBS completes the disbursement of all amounts payable to Affected Investor Accounts, UBS shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection C. UBS shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of the money transferred; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that UBS has made payments from the Fair Fund to Affected Investor Accounts in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies UBS as the Respondent in these proceedings and the file number of these proceedings to Reid A. Muoio, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549. UBS shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(xiii) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Fair Fund 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 the last day.

By the Commission.

Vanessa A. Countryman
Secretary