

contracts to certain employees of Texas institutions of higher education participating in the Texas Optional Retirement Program. There are approximately 100 registrants governed by Rule 6c-7. The burden of compliance with Rule 6c-7, in connection with the registrants obtaining from a purchaser, prior to or at the time of purchase, a signed document acknowledging the restrictions on redeemability imposed by Texas law, is estimated to be approximately 3 minutes of professional time per response for each of approximately 3000 purchasers annually (at an estimated \$63 per hour),<sup>1</sup> for a total annual burden of 150 hours (at a total annual cost of \$9,450).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. The Commission does not include in the estimate of average burden hours the time preparing registration statements and sales literature disclosure regarding the restrictions on redeemability imposed by Texas law. The estimate of burden hours for completing the relevant registration statements are reported on the separate PRA submissions for those statements. (See the separate PRA submissions for Form N-3 (17 CFR 274.11b) and Form N-4 (17 CFR 274.11c).)

The Commission requests written comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or

send an e-mail to:  
PRA\_Mailbox@sec.gov.

Dated: March 20, 2009.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-6723 Filed 3-25-09; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-28652; 812-13645]

### UBS AG, et al.; Notice of Application and Temporary Order

March 19, 2009.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

*Summary of Application:* Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against UBS AG on March 19, 2009 by the United States District Court for the District of Columbia ("Injunction") until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

*Applicants:* UBS AG; UBS Financial Services Inc. ("UBSFS"); UBS Fund Advisor, L.L.C. ("UBSFA"); UBS Willow Management, L.L.C. ("UBS Willow"), UBS Eucalyptus Management, L.L.C., UBS Tamarack Management, L.L.C., UBS Juniper Management, L.L.C., and UBS Enso Management, L.L.C. (collectively, "UBSFA Advisers"); UBS Global Asset Management (Americas) Inc. ("UBS Global AM Americas"); UBS Global Asset Management (US) Inc. ("UBS Global AM US"); and UBS IB Co-Investment 2001 GP Limited ("ESC GP") (collectively, "Applicants").<sup>1</sup>

*Filing Dates:* The application was filed on March 19, 2009. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request,

personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 13, 2009, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicants: UBS AG and ESC GP, c/o UBS Investment Bank, 677 Washington Boulevard, Stamford, CT 06901; UBSFS, 1200 Harbor Boulevard, Weehawken, NJ 07086; UBSFA and UBSFA Advisers, 51 West 52nd Street, 23rd Floor, New York, NY 10019; UBS Global AM US, 51 West 52nd Street, 16th Floor, New York, NY 10019; UBS Global AM Americas, One North Wacker Drive, Chicago, IL 60606.

**FOR FURTHER INFORMATION CONTACT:** John Yoder, Senior Counsel, at 202-551-6878, or Marilyn Mann, Branch Chief, at 202-551-6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a temporary order and summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549-1520 (tel. 202-551-5850).

### Applicants' Representations

1. UBS AG is a company established under the laws of Switzerland that directly or through its subsidiaries provides global wealth management, securities and retail and commercial banking services. Each of the Applicants is either directly or indirectly controlled by UBS AG. UBS AG and ESC GP provide investment advisory services to employees' securities companies ("ESCs"), as defined in section 2(a)(13) of the Act, which provide investment opportunities for highly compensated key employees, officers, directors and current consultants of UBS AG and its affiliates. UBSFS, UBSFA, UBSFA Advisers and UBS Global AM Americas are registered as investment advisers under the Investment Advisers Act of 1940 ("Advisers Act") and currently serve as investment advisers to registered management investment companies ("Funds"). UBSFS is registered as a broker-dealer under the Securities Exchange Act of 1934

<sup>1</sup> \$63/hour figure for a Compliance Clerk is from *SIFMA's Office Salaries in the Securities Industry 2008*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

<sup>1</sup> Applicants request that any relief granted pursuant to the application also apply to any other company of which UBS AG is or may become an affiliated person (together with the Applicants, the "Covered Persons").

(“Exchange Act”) and acts as depositor and principal underwriter to various registered unit investment trusts (“UITs”). UBS Global AM US is registered as a broker-dealer under the Exchange Act and as an investment adviser under the Advisers Act and serves as principal underwriter to various open-end Funds.

2. On March 19, 2009, the United States District Court for the District of Columbia entered a judgment, which included the Injunction, against UBS AG (“Judgment”) in a matter brought by the Commission.<sup>2</sup> The Commission alleged in the complaint (“Complaint”) that UBS AG violated section 15(a) of the Exchange Act and section 203(a) of the Advisers Act by acting as an unregistered broker-dealer and investment adviser. The Complaint alleged that UBS AG, largely through individuals known as client advisers, used United States jurisdictional means to provide cross-border brokerage and investment advisory services to thousands of United States clients. The Complaint further alleged that this cross-border business was serviced primarily from Switzerland. The Complaint further alleged that at all times UBS AG was aware that it could provide these services to United States cross-border clients only through an entity registered with the Commission as a broker-dealer or investment adviser. Without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, UBS AG consented to the entry of the Injunction, the payment of disgorgement and certain undertakings to take various remedial actions.

#### Applicants’ Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security, or in connection with activities as an underwriter, broker or dealer, from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust, or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines

“affiliated person” to include, among others, any person directly or indirectly controlling, controlled by, or under common control, with the other person. Applicants state that UBS AG is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3). Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) of the Act if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the conduct of the Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting the Applicants and the other Covered Persons from the disqualification provisions of section 9(a).

3. Applicants believe that they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the requested exemption from section 9(a).

4. Applicants state that the alleged conduct giving rise to the Injunction did not involve any of the Applicants acting in the capacity of investment adviser, sub-adviser or depositor to any registered investment company or ESC, or in the capacity of principal underwriter for any open-end Fund or UIT (“Fund Service Activities”). Applicants note that none of the current or former directors, officers, or employees of the Applicants (other than UBS AG) had any knowledge of, or had any involvement in, the conduct alleged in the Complaint. Applicants further state that the personnel at UBS AG who were involved in the violations alleged in the Complaint have had no and will not have any future involvement in Fund Service Activities.

5. Applicants state that the inability of the Applicants to engage in Fund Service Activities would result in potentially severe financial hardships for the registered investment companies they serve and the registered investment companies’ shareholders or unitholders. Applicants state that they will distribute written materials, including an offer to

meet in person to discuss the materials, to the boards of directors of the Funds (the “Boards”), including the directors who are not “interested persons,” as defined in section 2(a)(19) of the Act, of the Funds, and their independent legal counsel as defined in rule 0–1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. Applicants state that they will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also state that, if they were barred from providing Fund Service Activities to registered investment companies and ESCs, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establishing an expertise in providing Fund Service Activities. Applicants further state that prohibiting them from providing Fund Service Activities would not only adversely affect their businesses, but would also adversely affect over 425 employees that are involved in those activities. Applicants also state that disqualifying UBS AG and ESC GP from continuing to provide investment advisory services to ESCs is not in the public interest or in furtherance of the protection of investors. Because the ESCs have been formed for the benefit of key employees, officers, directors and current consultants of UBS AG and its affiliates, it would not be consistent with the purposes of the ESC provisions of the Act to require another entity not affiliated with UBS AG to manage the ESCs. In addition, participants in the ESCs have subscribed for interests in the ESCs with the expectation that the ESCs would be managed by an affiliate of UBS AG.

7. Applicants state that UBS AG and certain other Applicants have previously received orders under section 9(c), as described in greater detail in the application.

#### Applicants’ Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission’s rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption

<sup>2</sup> *Securities and Exchange Commission v. UBS AG*, Judgment as to UBS AG, 1:09–CV–00316 (D.D.C.) (entered March 19, 2009).

from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

**Temporary Order:**

The Commission has considered the matter and finds that the Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

*It is hereby ordered*, pursuant to section 9(c) of the Act, that Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from March 19, 2009, until the Commission takes final action on their application for a permanent order.

By the Commission.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-6655 Filed 3-25-09; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59608; File No. SR-NYSE-2009-31]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Amending the Listed Company Manual Section 902.08 To Establish an Initial Listing Fee and an Annual Listing Fee for Securities Listed Under Section 102.03 and Traded on the NYSE Bonds System**

March 19, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 16, 2009, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the Listed Company Manual (the "Manual")

Section 902.08 to establish an initial listing fee and an annual listing fee for all securities listed under Section 102.03 and traded on NYSE BondsSM system ("NYSE Bonds"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The Exchange proposes to amend the Listed Company Manual (the "Manual") Section 902.08 to establish an initial listing fee and an annual listing fee for all securities listed under Section 102.03 and traded on NYSE BondsSM system ("NYSE Bonds"). Specifically, the Exchange seeks to implement an initial listing fee of \$5,000 and an annual listing fee of \$5,000 for the securities listed in Section 102.03 of the Manual.

**I. Background**

Currently, the Exchange imposes a \$15,000 listing fee for bonds and other fixed income debt securities that list on the Exchange pursuant to Section 102.03 of the Manual. Specifically, the Exchange charges the \$15,000 listing fee to non-NYSE issuers.

NYSE issuers, however, are not charged any listing fee for these bonds and other fixed income debt securities. In November 2006, the Exchange filed a proposed rule change establishing rules for the trading of unlisted debt securities on NYSE Bonds.<sup>4</sup> Specifically, this filing established NYSE Rules 1400 and 1401 in connection with the NYSE Exemption Request. As a result of the November

2006 rule filing, NYSE issuers were permitted to trade their unlisted bonds on the Exchange. Non-NYSE issuers, however, would not be permitted to trade their bonds on NYSE Bonds unless they were listed on the Exchange.

**II. Proposed Amendments**

The Exchange now proposes to amend the listing fees for NYSE and non-NYSE issuers. Under amended Section 902.08 of the Manual, the initial listing fee for non-NYSE issuers of bonds and other fixed income debt securities that list on the Exchange pursuant to Section 102.03 of the Manual will be a flat fee of \$5,000. The annual listing fee for these bonds and other fixed income debt securities will also be \$5,000.00. If an NYSE issuer opts to have its bonds or other fixed income debt securities listed on the Exchange, the NYSE issuer will be subject to the \$5,000 initial listing fee and \$5,000 annual listing fee. These fees will cover administrative and regulatory costs incurred by the Exchange. If an NYSE issuer does not choose to have its bonds or other fixed income debt securities listed on the Exchange, then the NYSE issuer is exempt from paying any listing fees but may still trade its bonds on the Exchange.

Because revenue is needed to pay for the operation and regulation of these listings, the Exchange has determined that the proposed \$5,000 initial and \$5,000 annual listing fees provide an attractive pricing strategy to its customers and is sufficient for covering the Exchange's costs to provide its services to the issuers.

U.S. Government issues are exempt from securities registration under the Securities and Exchange Act of 1934. Because these U.S. Government issues are not subject to the Acts' listing requirements, the Exchange is not required to perform an administrative and regulatory review of these listed bonds. Accordingly, U.S. Government issues will continue to list on the Exchange free of charge, as set forth in Section 902.08 of the Manual.

**2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6<sup>5</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>6</sup> in general and Section 6(b)(4) of the Act<sup>7</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Release No. 54767 (November 16, 2006), 71 FR 67680 (November 22, 2006) (SR-NYSE-04-69).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78a.

<sup>7</sup> 15 U.S.C. 78f(b)(4).