

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. EAF04013000-01**

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REGISTRATION & DISCLOSURE

**TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")**

**RE: UBS Financial Services Inc., Respondent
Member Firm
BD No. 8174**

Pursuant to Rule 9216 of FINRA's Code of Procedure, Respondent UBS Financial Services Inc. ("UBSFS" or the "firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against UBSFS alleging violations based on the same factual findings.

UBSFS understands that:

1. Submission of this AWC is voluntary and will not resolve the respective matters unless and until the AWC has been reviewed and accepted by the National Adjudicatory Council ("NAC"), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against it; and
3. If accepted:
 - a. this AWC will become part of UBSFS' permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 - b. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about UBSFS' disciplinary record;
 - c. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
 - d. UBSFS may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects UBSFS' testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

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UBSFS also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

UBSFS, through its predecessors, has been a member of FINRA (f/k/a as NASD) since 1936. UBSFS' principal offices are located in New York, New York.

On February 12, 2004, an AWC became final wherein NASD censured and fined UBSFS \$2,310,884, and ordered the firm to undertake certain remedial and corrective measures relating to providing refunds to customers who did not receive appropriate mutual fund Class A share breakpoint discounts. The sanctions were based on UBSFS' failure to provide mutual fund breakpoint discounts as described in relevant fund prospectuses in violation of NASD Conduct Rule 2110. On the same date, in a related settlement with the Securities and Exchange Commission (the "SEC"), UBSFS was ordered to pay a monetary civil penalty of \$2,310,884.

I.

WAIVER OF PROCEDURAL RIGHTS

UBSFS specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against it;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the NAC and then to the SEC and a U.S. Court of Appeals.

Further, UBSFS specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

UBSFS further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

II.

ACCEPTANCE AND CONSENT

A. Findings

UBSFS hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

Summary

This AWC concerns (1) a review of UBSFS' sale of Class B and Class C shares of mutual funds and (2) a review of the firm's sales to customers of mutual funds that offered Net Asset Value ("NAV") Transfer Programs. The following summarizes the two reviews:

The Class B and Class C Share Mutual Fund Review

This matter arises in part from a review of UBSFS' sale of Class B mutual fund shares between January 1, 2002 and May 31, 2003 and the sale of Class C mutual fund shares between January 1, 2002 and September 30, 2003 (collectively the "Class B and Class C share review period"). Within the Class B and Class C share review period UBSFS effected transactions where it made recommendations to customers to purchase Class B and Class C shares through its registered representatives, known as financial advisors ("FAs"). In connection with its recommendations, UBSFS did not consider on a consistent basis, that an equal investment in Class A shares would generally have been more advantageous for certain customers. Accordingly, UBSFS will undertake a remediation plan that includes more than 8,650 transactions involving approximately 2,000 customer households.

In particular, the firm did not consistently consider that large investments in Class A shares of mutual funds entitle customers to breakpoint discounts on sales charges, usually beginning at the \$50,000 investment level, which are generally not available for investments in Class B and Class C shares. In fact, customers may be entitled to breakpoints based upon a single mutual fund purchase, multiple purchases in the same "family of funds," and/or mutual fund investments held, at the time of the new purchase, by members of the customer's "household," as that term is defined in the prospectus of the fund in which the shares are being purchased. Unlike Class A shares, Class B shares are subject to contingent deferred sales charges ("CDSCs") for a period of time, generally six years, as well as higher ongoing distribution and service fees ("Rule 12b-1 fees") for as long as the Class B shares are held. The CDSCs and the higher ongoing Rule 12b-1 fees affect the return on customers' mutual fund investments.

In addition, UBSFS' supervisory and compliance policies and procedures during the review period were not reasonably established, maintained and/or enforced so that the firm, at the time of each sale, provided consideration to, on a consistent basis, the benefits of the various mutual fund share classes as they applied to individual customers.

The NAV Transfer Program Review

This matter also arises from a review of UBSFS' sale of shares of various classes of mutual funds where, between January 1, 2002 through June 30, 2004 (the "NAV review period"), UBSFS failed to provide certain investors the opportunity to purchase Class A shares of certain mutual funds at NAV. In particular, certain mutual funds allowed qualifying investors to purchase Class A shares at NAV and not pay any initial sales charges, if the customer invested the proceeds from the redemption of shares of another mutual fund, within specified time frames, and previously had paid either a front-end or back-end sales charge ("NAV Transfer Programs").

During the NAV review period, UBSFS failed to exercise reasonable diligence to identify the essential terms and conditions of the NAV Transfer Programs of certain mutual funds, and failed to establish, maintain and enforce systems and procedures reasonably designed to provide its customers with the benefit of NAV Transfer Program pricing when they qualified. As a result, some investors who were eligible to purchase Class A shares under NAV Transfer Programs: (1) purchased Class A shares and incurred front-end sales charges that they should not have paid, and/or (2) purchased other share classes of these mutual funds and thereby became subject to back-end sales charges, also known as CDSCs, as well as higher ongoing Rule 12b-1 fees, typically associated with share classes other than Class A shares.

Class B and Class C Share Mutual Fund Share Classes

1. UBSFS sells mutual funds with different classes of shares representing interests in the same portfolio of securities, but differing in the structure and amount of sales charges paid directly by shareholders and continuous, asset-based fees assessed on each shareholder's investment.
2. For example, Class A shares are subject to a front-end load, or initial sales charge, when originally purchased, and have modest annual fund expenses, including Rule 12b-1 fees that are typically 0.25 percent. The majority of the front-end sales load is paid to the selling broker-dealer as a commission. The balance of the initial investment is paid for the fund's shares. Typically with mutual funds, the front-end load decreases as the size of the investment increases. This concept applies to both single purchases and to multiple purchases in the same family of funds that may be aggregated with the customer's other investments, as well as investments by that customer's household, as permitted by the funds' prospectuses. For most investments in which the total dollar amount invested in a fund family is \$1 million or more, the front-end load is generally waived.¹ These discounts are commonly referred to

¹ A CDSC, generally totaling 1.00 percent, is typically charged for redemptions that occur within the first year following the investment.

as "breakpoints" and the discounts typically increase at each of the \$50,000; \$100,000; \$250,000; \$500,000 and \$1 million levels.

3. Generally, Class A share investments that, when aggregated, fall below \$50,000 are subject to an initial sales charge that can range from 3.00 to 5.50 percent. However, for an investment: (i) between \$50,000 and \$99,999 the sales charge can range from 2.50 to 4.50 percent; (ii) between \$100,000 and \$249,999 the sales charge can range from 2.00 to 3.50 percent; (iii) between \$250,000 and \$499,999 the sales charge can range from 1.50 to 2.50 percent; (iv) between \$500,000 and \$999,999 the sales charge can range from 1.25 to 2.00 percent; and (v) of \$1 million or more reduces the sales charge to zero. These breakpoints reduce the commissions paid to the selling broker-dealers by a corresponding amount. Customers can receive the benefits of breakpoint discounts by, among other ways, making a single investment, aggregating purchases, employing rights of accumulation or utilizing letters of intent.²
4. In contrast, Class B shares do not carry any front-end sales charge and therefore do not have front-end breakpoint discounts regardless of the size of the investment. Instead of a front-end sales charge, Class B shares have higher annual Rule 12b-1 fees (typically 1.00 percent) than Class A shares (typically 0.25 percent) and may be subject to a CDSC if redeemed prior to the expiration of a holding period specified in the prospectus. The amount of the CDSC is generally calculated as a percentage of the lesser of the initial amount invested or the investment's value at the time of the sale, declines each year and eventually disappears entirely. Class B shares usually convert to Class A shares, at no cost to the customer, after eight years.
5. Class C shares typically do not carry a front-end sales charge but may be subject to a 1.00 percent CDSC if the shares are redeemed within one year. In comparison to Class A shares, Class C shares generally have higher annual Rule 12b-1 fees (typically 1.00 percent). Class C shares never convert to Class A shares, thereby subjecting customers to higher expenses as long as the customers hold the Class C shares.
6. The different sales charges, availability of breakpoints and Rule 12b-1 fees associated with different share classes have a direct effect on a mutual fund investment's return. The significance of these differences is that, at certain dollar levels and over certain holding periods, an equal investment in Class A shares generally will yield a better return than a similar investment in Class B or Class C shares.
7. With Class B shares, the mutual fund distributor, which is generally an affiliate of the mutual fund, advances a commission to the selling broker-dealer. Broker-dealers and their representatives may receive greater commissions from the sale of Class B shares than from the sale of the same amount of Class A shares if the sale would qualify for breakpoint discounts. Mutual fund complexes, through their distributors, recoup the commissions they

² A right of accumulation permits a customer or an eligible group of related customers (e.g., the customer, the spouse and minor children) to "accumulate" or combine existing holdings of shares of funds within the same fund family with additional purchases of shares of the same fund family for the purpose of achieving breakpoints and associated discounts. Customers may also qualify for breakpoints by executing a letter of intent, which is an agreement to make multiple purchases of Class A shares issued by a fund family over a period of time, usually around 13 months, which, when aggregated, equal an amount that qualifies for a breakpoint discount.

advance for Class B shares through the substantially higher Rule 12b-1 fees and/or the CDSC. The different fee structures and characteristics of Class A, Class B and Class C shares, including the availability of breakpoint discounts with regard to purchases of Class A shares, are described in the mutual fund prospectuses and statements of additional information ("SAIs").

***Suitability Violations in Connection with the
Recommendation of Class B and Class C Shares***

8. On certain occasions during the Class B and Class C share review period, UBSFS recommended and sold Class B and/or Class C shares of mutual funds to customers who, depending upon among other things, the amount of the investment and the customer's contemplated holding period, would have benefited had they purchased Class A shares instead. Specifically, these customers made purchases of Class B and/or Class C shares in various mutual funds which, had they purchased Class A shares, could have qualified for breakpoints, through single purchases, aggregating multiple purchases, employing rights of accumulation or utilizing letters of intent. As a result of the customers' purchases of Class B and/or Class C shares, in some instances, UBSFS received greater commissions than it would have received had the customers purchased Class A shares instead.
9. NASD Conduct Rule 2310 requires that, before recommending a transaction, a member firm and its registered representatives shall have reasonable grounds for believing, on the basis of information furnished by the customer, and after reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, that the recommended transaction is suitable for the customer. Further, FINRA has long held that in recommending share classes of a mutual fund, a registered representative has an obligation to avoid unnecessarily increasing the costs that his or her customers pay. Also, a registered representative's recommendations must be consistent with his or her customer's best interests.
10. In recommending the purchase of mutual funds, a member firm and its registered representatives must determine the suitability of the class of shares to be purchased as well as the suitability of the particular mutual fund. Primary considerations include the investment amount, the expected term of the investment, the applicable sales loads, fees and expenses associated with each class of shares, and the effect of such factors on the ultimate return on the investment to the investor, and the customer's personal and financial circumstances and investment objectives. These individual considerations must be balanced at the point of purchase by the member firm.
11. In determining the suitability of a particular share class, registered representatives must weigh the consequences of the class selection by considering the effect of the comparative sales loads and annual expenses for the customer's contemplated duration of the investment.
12. In certain instances during the Class B and Class C share review period, UBSFS did not adequately consider, on a consistent basis, the foregoing elements when making recommendations to customers to purchase Class B and Class C shares instead of Class A shares. For example, in one instance, a UBSFS customer invested \$100,000 in Class B

shares, as opposed to Class A shares, in a bond fund. By purchasing Class B shares instead of Class A shares, the customer did not receive the benefit of the breakpoint available with Class A shares, and was subjected to additional fees and expenses (Rule 12b-1 fees and CDSCs). A quantitative analysis at the time of sale would have revealed that, had the customer directed an identical dollar amount toward the purchase of Class A shares, then the redemption value for the Class A shares would have been higher than the redemption value for Class B shares, as of the end of each year following the purchase date until the date when the Class B shares convert into Class A shares, regardless of the rate of return that the customer could have earned.

13. By virtue of the above, aforementioned conduct in connection with Class B and Class C share recommendations, UBSFS violated NASD Conduct Rules 2110 and 2310.

***UBSFS' Supervisory and Compliance Policies and Procedures
Regarding Class B and Class C Shares Were Incomplete***

14. Since May 1999, UBSFS has had mutual fund policies and procedures specifically requiring FAs to consider share class cost issues, including breakpoints, CDSCs and 12b-1 fees, when determining the most appropriate share class for a customer. As early as August 2001, UBSFS' policies and procedures prohibited FAs from recommending or soliciting single-ticket purchases of \$100,000 or more of Class B shares and prohibited all single-ticket purchases of \$250,000 or more. The policies further stated that in the event a customer wanted to purchase between \$100,000 and \$250,000 of Class B shares on an unsolicited basis, FAs were required to obtain a "Class B Share Disclosure Letter" signed by the customer before effecting the transaction. The letter was designed to disclose the differences between Class A and B shares. The policy also required the branch office manager ("BOM") to pre-approve the order ticket and to confirm that the FA obtained a signed Class B Share Disclosure Letter. In June 2003, UBSFS updated its policies further restricting the sale of Class B Shares. That policy prohibited FAs from recommending Class B Share purchases of \$50,000 or more. Unsolicited Class B Share purchases of \$50,000 required the execution of a Disclosure Letter as well as BOM review and sign off. In addition, UBSFS amended its B Share Purchase Report to surveil to this enhanced Class B Share policy.
15. While the policies and procedures limited the number of problematic Class B share transactions at UBSFS, these policies and procedures were nevertheless deficient in certain respects. First, the policies restricting the dollar amount of Class B Share transactions which could be recommended by FAs did not address the need for FAs to aggregate purchases as permitted by fund prospectuses to determine the maximum available Class A share breakpoint for clients until June 2003, when the policy was reissued. Second, on some occasions, the firm did not consistently enforce the policy that FAs obtain a signed Class B Share Disclosure Letter for all unsolicited trades over \$100,000. Third, the firm also did not provide its FAs and supervisors with tools, training and guidance that sufficiently addressed the various classes of mutual funds including, among other things, i) the various ways to aggregate accounts' holdings and purchase amounts to achieve maximum breakpoints; and ii) the effect that front-end loads, breakpoint discounts, annual expense differentials and CDSCs have on customer's mutual fund investment.

16. Last, UBSFS' procedures were not sufficient to ensure that its FAs made adequate disclosure to each client about the various classes of mutual funds, including, when recommending Class B or Class C shares, disclosures that (i) such shares were subject to higher annual fees that could have a negative impact on the customers' investment return, or (ii) once breakpoints became available, an equal investment in Class A shares could yield a higher return.
17. By virtue of the above, aforementioned conduct in connection with the supervision of Class B and Class C share recommendations, UBSFS failed to establish, maintain and enforce supervisory and compliance policies and procedures that were reasonably designed to achieve compliance with NASD Conduct Rules 2110, 2310, and 3010.

Purchases of Class A Shares and NAV Transfer Programs

18. When purchasing Class A shares, investors typically purchase the shares at the "public offering price," which is the NAV plus the initial sales charge. Many mutual funds, however, offer investors the opportunity to purchase Class A shares at NAV – without paying an initial sales charge – under certain circumstances. For example, mutual funds that sell Class A shares usually offer sales charge discounts at certain levels of investment, commonly referred to as "breakpoints." While the terms and conditions of these discounts vary among different mutual funds, most mutual funds allow investors who invest \$1 million or more to purchase the shares at NAV, so long as these shares are held for at least one year. Other examples of NAV opportunities include those provided by mutual funds to retirement plans, employees of broker-dealers, and employees of the mutual fund companies and their affiliates. Further, certain funds of entities affiliated with UBSFS offered the opportunity to purchase Class A shares at NAV – without paying an initial sales charge – to clients of the firm's FAs who had joined UBSFS from another investment firm during a certain period of time prior to the date on which the client purchased shares of a fund affiliated with UBSFS, if such purchase was made using proceeds from the redemption of a fund sponsored by the registered representative's previous firm.
19. During the NAV review period, some mutual funds offered investors the opportunity to purchase Class A shares at NAV through NAV Transfer Programs, regardless of the amount invested. Under these programs, an investor purchasing Class A shares using proceeds from the redemption of shares of another mutual fund was eligible to purchase Class A shares at NAV, provided that the investor paid an initial sales charge or CDSC on the redeemed shares and that the qualifying redemption occurred sufficiently close in time to the new purchase. While the precise terms of each NAV Transfer Program varied from fund to fund, if the prior redemption qualified under an NAV Transfer Program, the investor was entitled to purchase Class A shares without paying an initial sales charge. An investor, who purchases Class A shares with a sales load, when he qualified for a purchase at NAV, could pay up to 5.50% of his purchase price in sales charges that he did not have to incur. In addition, a customer who purchases Class B or Class C shares, when he would have qualified for the purchase of A shares through an NAV Transfer Program, will pay both higher ongoing Rule 12b-1 fees, and potentially, CDSCs upon redemption. Therefore, the purchase of Class A shares at NAV,

through an NAV Transfer Program or otherwise, will result in lower costs compared to an equal purchase of Class A shares with an initial sales charge, or an equal purchase of Class B or Class C shares.

***UBSFS' Systems and Procedures Failed to Adequately
Identify Available NAV Transfer Programs***

20. During the NAV review period, UBSFS failed to establish, maintain and enforce supervisory systems and procedures reasonably designed to identify NAV Transfer Programs offered by the mutual funds that it sold to its customers. For example, the firm failed to conduct a systematic review of whether fund families offered NAV Transfer Programs either before entering into selling agreements or after signing selling agreements with the mutual fund families. Moreover, the firm had no system to periodically review the funds to determine if an NAV Transfer Program was offered at any specific time until a surveillance report was developed in September 2004. UBSFS further failed to adequately identify qualifying programs and also failed to identify customers who qualified for such pricing. Thus, the firm often did not give its customers the benefit of available programs.
21. UBSFS offers an "open architecture" system for mutual funds; meaning it offers a wide variety of mutual fund families to its customers. Accordingly, during the NAV review period, UBSFS offered more than 2,000 different mutual funds from more than 150 different fund families.
22. During the NAV review period, UBSFS sold certain mutual fund families that had NAV Transfer Programs. Sales of the top five fund families with NAV Transfer Programs during the NAV review period totaled over \$2.5 billion.³ However, not every purchaser qualified for the NAV Transfer Programs, which only applied under specific, and sometimes limited, circumstances.
23. During the NAV review period, UBSFS failed to establish, maintain and enforce a supervisory system and procedures reasonably designed to: (i) identify opportunities for investors to purchase mutual funds at NAV under available NAV Transfer Programs and, (ii) provide eligible investors with the benefit of available NAV Transfer Programs. By reason of the foregoing, UBSFS violated NASD Conduct Rules 3010 and 2110.

B. Sanctions

UBSFS consents to the imposition, at a maximum, of the following sanctions:

1. A censure; and
2. A fine of \$1,000,000.00.⁴

³ Total sales numbers reflect gross sales by UBSFS in these funds, including some sales that did not qualify for NAV pricing.

⁴ The fine of \$1,000,000 includes \$250,000 for Rule 3010 violations involving NAV Transfers.

3. UBSFS agrees to complete the following undertakings:

UBSFS' Undertakings Relating to NAV Transfer Program Remediation

- a. UBSFS will provide remediation to customers who, during the period January 1, 2002 through Notice of Acceptance (the "effective date") of this AWC (the "relevant NAV time period"), purchased shares of mutual funds and qualified for, but did not receive, the benefit of an NAV Transfer Program (each such purchase constitutes a "Qualifying NAV Purchase").⁵
 - i. Refund of Initial Sales Charge: For each customer who paid an initial sales charge, UBSFS shall refund the sales charge paid, plus interest from the date of the purchase through the payment date at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2) (the "IRS Rate").
 - ii. Refund of Various Fees and Expenses: For each customer who purchased a class of shares other than Class A, UBSFS shall make a cash payment to the customer sufficient to place the customer in a substantially equivalent financial position to the position such customer would have been in with respect to the Qualifying NAV Purchase had the investor purchased Class A shares at NAV rather than another class of shares, plus interest from the date of purchase through the payment date at the IRS Rate.
 - iii. For customers whose Qualifying Class B and/or Class C Share Purchase, as defined below in paragraph II.B.3.d.i., also constitutes a Qualifying NAV Purchase, UBSFS shall first remediate the purchase pursuant to its Remediation Methodology and then shall remediate any remaining Qualifying Class B and/or Class C Share Purchases, as applicable under this AWC.
- b. UBSFS will provide remediation pursuant to Section II.B.3.a., above in accordance with a methodology not unacceptable to FINRA staff (the "NAV Remediation Methodology"). The NAV Remediation Methodology will be provided in writing to FINRA staff prior to retaining the Third Party Examiner, as described in Section II.B.3.g., below. The Third Party Examiner will utilize the NAV Remediation Methodology to assess UBSFS' implementation of the remediation process.
- c. Within 60 days from the date of the Notice of Acceptance of this AWC, and prior to any remediation payment, UBSFS shall submit to FINRA for review a sample letter in plain English notifying customers of remediation payments concerning their Qualifying NAV Purchases. The letter shall not be unacceptable to FINRA.

⁵ Eligible purchases for which a customer used proceeds of qualifying redemptions totaling less than \$2,000 are excluded and shall not be deemed "Qualifying NAV Purchases."

UBSFS' Undertakings Relating to Class B and Class C Share Remediation

- d. UBSFS will provide remediation to certain customers who, during the period January 1, 2002 through the Notice of Acceptance (the "effective date") of this AWC (the "relevant time period"), purchased Class B and/or Class C Shares of mutual funds.⁶
- i. UBSFS shall create a list of customers who purchased (i) \$50,000 or more of Class B shares during the relevant time period, in any single fund family, which shall be aggregated by household⁷ and fund family in determining if the \$50,000 threshold was met; and (ii) Class C shares during the relevant time period which, when aggregated by household and fund family, total \$500,000 or more and involve payment of a front-end load, or \$1 million or more where no front-end load was paid. The list must include at least the customer's name(s) and contact information, a firm-designated household identification number, the trade date, fund name, fund symbol and number of shares purchased, and the gross principal amount invested for every purchase. Every purchase transaction on the list is deemed a "Qualifying Class B and/or Class C Share Purchase." When determining the list of Qualifying Class B and/or Class C Share Purchases, UBSFS shall make such calculations based on the effective date of this AWC. However, Qualifying Class B and/or Class C Share Purchases shall not include the following items (1) to (3), and may not, at UBSFS' option, include the following items (4) to (9):
- (1) Purchases of Class B and Class C shares for which clients have previously settled and signed releases of claims against UBSFS;
 - (2) Purchases of Class B and Class C shares which were later cancelled at no cost to the customer, or were cost-free exchanges;
 - (3) Purchases of Class B shares which, when aggregated with other Class B share purchases at the firm by the same customer household in the same fund family during the relevant time period, total less than \$100,000, and involved a mutual fund that imposed a Class A share initial sales charge exceeding 4.00 percent for purchase amounts less than \$100,000;
 - (4) Purchases of Class B shares which, when aggregated with other Class B share purchases at the firm by the same customer household in the same fund family during the relevant time period, total less than \$100,000, and where the customer (1) entered into a systematic withdrawal plan at the time of the Class B share purchase, and immediately began receiving systematic withdrawals from the Class B share purchase without incurring CDSCs, or (2) chose not to reinvest all capital gains and dividends from the Class B share purchase;

⁶ UBSFS may offset from the Class B and/or Class C share remediation any amounts paid to a customer in the NAV Transfer Program remediation required under E.3.a. of the AWC.

⁷ "Household" includes all accounts that are related by at least two of the following three factors: (1) tax identification/social security numbers, (2) address, and (3) last or "key" name.

- (5) Purchases of Class B shares which, assuming a 5.00 percent annual rate of return and considering all expenses, are projected to have a higher redemption value, determined as of the end of each year following the purchase date, in comparison to Class A shares in two or more years during the period beginning with the effective date of the AWC and ending on the date the Class B shares are scheduled to automatically convert to Class A shares under the terms of the fund prospectuses in effect at the time of the purchase;
 - (6) Purchases of Class B shares which, assuming a 5.00 percent annual rate of return and considering all expenses, are projected, as of the date on which the Class B shares are scheduled to automatically convert to Class A shares, to have a value within \$100 of the projected value of Class A shares had the clients purchased Class A shares instead of Class B shares;
 - (7) Purchases of Class B and Class C shares where the gross principal amount invested was \$250 or less;
 - (8) Purchases of Class B shares which, assuming Class A shares were purchased instead, would not be eligible for a breakpoint at \$100,000 or more in the mutual funds listed in "Schedule A" (attached); and
 - (9) Purchases of Class B shares which, assuming Class A shares were purchased instead, would not be eligible for a breakpoint at \$250,000 or more in the mutual funds listed in "Schedule B" (attached).
- ii. UBSFS may further remove Qualifying Class B and/or Class C Share Purchases as long as it provides FINRA with quantitative proof that the customer could not materially benefit⁸ from having the particular transaction converted to Class A shares and the removal of such Qualifying Class B and/or Class C Share Purchase is not unacceptable to FINRA.
 - iii. Within 120 days from the effective date of this AWC, UBSFS shall offer any customer, who made a Qualifying Class B and/or Class C Share Purchase(s) and still holds all, or any portion of, such shares, the option of converting such Class B and/or Class C shares into Class A shares in such a manner that each customer is placed in substantially the same financial position, based on actual fund performance, in which such customer would have been with respect to the Qualifying Class B and/or Class C Share Purchase(s) had the customer purchased Class A shares instead of Class B and/or Class C shares.⁹

⁸ UBSFS will not be required to offer a customer conversion if the customer would not materially benefit from an offer of conversion because either the annual expense differential between Class A shares and Class B and/or Class C shares, the CDSC schedule, and/or the conversion year quantitatively are such that Class B and/or Class C shares may be substantially equal, or more appropriate, compared to Class A shares of the same fund, at particular investment levels.

⁹ In addition to the Qualifying Class B and/or Class C Share Purchase, any conversion will also take into account any shares acquired through reinvestment of distributions paid on the Qualifying Class B and/or Class C Share Purchases.

- iv. Customers electing to convert any Qualifying Class B and/or Class C Share Purchase shall receive:
- (1) an amount of Class A shares equal to what the customer could have purchased on the date of the Qualifying Class B and/or Class C Share Purchase utilizing the same amount of money, before application of any fees or expenses, invested in the Qualifying Class B and/or Class C Share Purchase and applying the breakpoint sales charges associated with the Class A shares calculated as described herein; and
 - (2) an additional amount of Class A shares equal to the number of reinvestment shares (as of a trading day sufficiently preceding the conversion date to allow the execution of the necessary transactions) the customer acquired in connection with the Qualifying Class B and/or Class C Share Purchase, converted on a share-for-share basis.
- v. Also, UBSFS shall pay cash to put those clients who made a Qualifying Class B and/or Class C Share Purchase(s) and sold some or all of their Class B and/or Class C shares comprising the Qualifying Class B and/or Class C Share Purchase(s) into substantially the same financial position, based on actual fund performance and redemption value, in which such clients would have been had the clients purchased Class A shares instead of Class B and/or Class C shares. In the event that a customer is entitled to a cash payment as specified in this sub-paragraph, and is also eligible to convert Class B shares that the customer continues to hold, UBSFS shall specify in its communication to the customer that the cash payment is not in lieu of the customer's right to convert all remaining eligible Class B share holdings.
- vi. In performing the undertakings set forth in paragraphs II.B.3.d.iv. and II.B.3.d.v., above, each customer shall be entitled to breakpoints calculated based on the total of all opening Class B and/or Class C share balances, depending on the share class for which conversion and/or cash is being offered, aggregated by household and fund family, plus the total of all respective Class B and/or Class C share purchases aggregated by household and fund family during the relevant time period, without respect to any fund family limitation as to time less than the full relevant time period.
- vii. In the event that any customer who made a Qualifying Class B and/or Class C Share Purchase(s) elects to convert any of those Qualifying Class B and/or Class C Share Purchases to Class A shares from Class B and/or Class C shares, and UBSFS is unable to effectuate such conversion for any reason, UBSFS shall pay cash to such customer in an amount that will place the customer in substantially the same financial position, based on actual fund performance and liquidation value, that such customer would have been in as of the effective date of this AWC had the customer made his or her Qualifying Class B and/or Class C Share Purchase(s) in Class A shares instead of Class B and/or Class C shares.

- viii. When calculating the financial position of any customer for purposes of conversion, UBSFS shall make such calculation based on the date of conversion, or on such date immediately prior to the date of conversion sufficient to allow the execution of the necessary transactions. When calculating the financial position of any customer for purposes of a cash payment, UBSFS shall make such calculation as of the date the Qualifying Class B and/or Class C Share Purchase was redeemed, in the case of closed or partially closed positions, or, in the event that the cash payment is required as a substitute for conversion, as close as practical to the date of remediation.
- e. Within 60 days from the date of the effective date of this AWC, and prior to any remediation payment, UBSFS shall submit to FINRA for review a sample letter in plain English: (i) offering customers, according to the particular characteristics of their account and purchases, the opportunity to convert their Qualifying Class B and/or Class C Share Purchases; (ii) explaining the economic advantages and disadvantages to the customer of the options; and (iii) stating that the customer should consult with a tax advisor to determine whether the conversion carries any federal, state, or local tax consequences. The letter shall not be unacceptable to FINRA. Customers who accept UBSFS' conversion offer with respect to their Qualifying Class B and/or Class C Share Purchases must agree to convert all of the Qualifying Class B and/or Class C Share Purchase shares held by the customer as of the date of the offer, and may not elect a partial conversion. Customers shall have 60 days from the mailing of the letters to accept the offer and advise UBSFS of their decision to accept.

General Terms Applicable to All Undertakings

- f. Within 120 days from the Notice of Acceptance of this AWC, UBSFS shall designate and train staff (the "Response Team") to field and respond to customer inquiries in connection with both the NAV and Class B and C Share remediation processes.
- g. Within 60 days from the Notice of Acceptance of this AWC, UBSFS shall retain at its own expense, a Third Party Examiner, not unacceptable to FINRA, to examine the firm's performance of its obligations under the terms of this AWC as reflected in its certified, Initial Report(s) to FINRA as described below in paragraph II.B.3.1.
- h. UBSFS shall exclusively bear all costs, including compensation and expenses, associated with the retention and performance of the Third Party Examiner.
- i. UBSFS (i) shall not have the authority to terminate the Third Party Examiner without the prior written approval of FINRA; (ii) shall compensate the Third Party Examiner, and persons engaged to assist the Third Party Examiner, for services rendered pursuant to this AWC at their reasonable and customary rates; and (iii) shall not be in and shall not have an attorney-client relationship with the Third Party Examiner and shall not seek to invoke the work product, attorney-client or any other doctrine or privilege to prevent the Third Party Examiner from transmitting any information, reports or documents to FINRA.

- j. UBSFS shall cooperate fully with the Third Party Examiner and shall provide the Third Party Examiner with prompt access to UBSFS' files, books, records and personnel as the Third Party Examiner reasonably deems necessary or appropriate in fulfilling any function or completing any task described in these undertakings.
- k. UBSFS shall complete the NAV and B and C Share remediation processes within 270 days from the effective date of this AWC.
- l. Within 330 days following the effective date of this AWC, UBSFS shall file a report (the "Initial Report") with FINRA, and simultaneously with the Third Party Examiner, through which it will provide a detailed description of the following:

Qualifying Class B and Class C Share Purchases

- i. The Qualifying Class B and/or Class C Share Purchases, including the customer's name(s) and contact information, a firm-designated household identification number, the trade date, fund name, fund symbol, number of shares purchased, and the gross principal amount invested for each Qualifying Class B and/or Class C Share Purchase;
- ii. The transactions the firm removed from the list of Qualifying Class B and/or Class C Share Purchases and the specific basis for each removal;
- iii. Those transactions for which customers received a letter offering conversion;
- iv. Those transactions for which customers received a cash payment, including details concerning the amount paid. Any cash payments resulting from the firm's inability to effect conversion shall be duly noted;
- v. How the firm created and staffed the Response Team to field and respond to customer inquiries, including, the number of individuals used to staff the Response Team, how the Response Team staff members were trained to respond to customer inquiries, how and by whom the Response Team was supervised, and what tools and information were used to respond to customer inquiries;
- vi. Each customer who had a Qualifying Class B and/or Class C Share Purchase and contacted the firm concerning remediation, and that the firm maintained a record of each customer inquiry; and
- vii. Each transaction for which the customer accepted the firm's offer of conversion and/or cash, including the material terms thereof, number of shares and value transferred.

Qualifying NAV Purchases

- viii. The remediation process for Qualifying NAV Purchases, including the identification of, and payment to customers eligible for remediation, pursuant to Section II.B.3.a. above, and the application of the Remediation Methodology to identify and calculate payments to customers;
- ix. All Qualifying NAV Purchases, in the format of a Microsoft Excel spreadsheet, including each customer's name, contact information and account number, the trade date, fund name, fund symbol, number of shares purchased, the gross principal amount invested for each Qualifying NAV Purchase, and the total dollar amount of restitution provided to each customer;
- x. How the firm created and staffed the Response Team to field and respond to customer inquiries, including, the number of individuals on the Response Team, the training of these individuals, how and by whom the Response Team was supervised, what tools and information were used to respond to customer inquiries, and how the firm maintained a record of all customer inquiries relating to Qualifying NAV Purchases; and
- xi. A list of all customers and investors who contacted the Response Team concerning remediation in connection with any Qualifying NAV Purchases.
- m. The firm's Initial Report must be submitted to FINRA, certified to, and signed by an officer of UBSFS who is registered with FINRA at the time the certifications are made. UBSFS shall preserve for a period of not less than three years from the effective date of the AWC and make available to FINRA the records underlying the certification as FINRA shall request.
- n. At the conclusion of the examination, but not later than 420 days following effective date of this AWC, UBSFS shall require its Third Party Examiner to submit a written Final Report to UBSFS, and to FINRA. The Final Report must recite the efforts the Third Party Examiner undertook to examine UBSFS' certified Initial Report, as well as the Examiner's findings. The Final Report shall address, at a minimum, (i) the Examiner's assessment of the firm's performance of the remediation processes (including the identification of customers eligible for remediation, exchange offers made and accepted, and cash payments), as reflected in the Initial Report, and whether such performance was consistent with the remediation described above, and, with respect to Qualifying NAV Purchases, the NAV Remediation Methodology, and (ii) a description of the review performed and the conclusions reached.

For good cause shown, and upon receipt of a timely request from UBSFS, FINRA may extend any of the procedural dates set forth above.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

III.

OTHER MATTERS

- A. UBSFS understands that it may attach to this AWC a Corrective Action Statement that is a statement of demonstrable corrective steps taken to prevent future misconduct. UBSFS understands that in this Statement it may not deny the charges or make any statement that is inconsistent with the AWC. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.
- B. UBSFS agrees to pay any monetary sanctions imposed on it within 20 days of notice that this AWC has been accepted.
- C. UBSFS specifically and voluntarily waives any right to claim that it is unable to pay now, or at any time hereafter, any monetary sanction imposed in this matter.

The undersigned certifies on behalf of UBSFS that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce me to submit it.

UBS Financial Services Inc.

12/11/07
Date

By: MARK S. SHELTON
Name: MSSh
Title: GENERAL COUNSEL

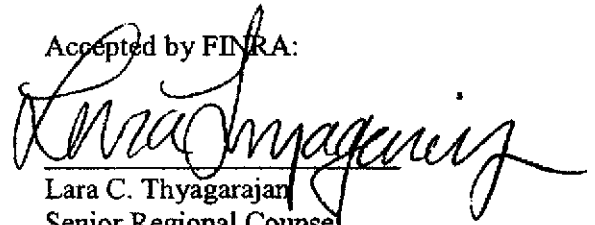
Reviewed by:

Bressler, Amery & Ross, P.C.

BFA
By: Brian F. Amery, Esq.
Counsel for UBS Financial Services Inc., Respondent

2/27/08
Date

Accepted by FINRA:



Lara C. Thyagarajan
Senior Regional Counsel
Department of Enforcement
Signed on behalf of the Director of
ODA, by delegated authority