

ESTADO LIBRE ASOCIADO DE PUERTO RICO
EN EL TRIBUNAL DE PRIMERA INSTANCIA
SALA SUPERIOR DE SAN JUAN

MANUEL MARTÍNEZ UMPIERRE

Peticionario

v.

OFICINA DEL COMISIONADO DE
INSTITUCIONES FINANCIERAS DE
PUERTO RICO; COMISIONADO DE
INSTITUCIONES FINANCIERAS DE
PUERTO RICO, Lcdo. Rafael Blanco
LaTorre

Demandados

NUM. CASO SJ-2014-CV-00210

RE: MANDAMUS

Regla 54 de las de Procedimiento Civil
Vigentes

"Los ciudadanos de una sociedad que se gobierna a sí misma deben poseer el derecho legal de examinar e investigar cómo se conducen sus asuntos, sujetos sólo a aquellas limitaciones que impone la más urgente necesidad pública. Debe elevarse ese derecho a una posición de la más alta santidad si ha de constituir un baluarte contra un liderato insensible." Soto, et al vs. Giménez Muñoz, et al, 112 DPR 477 (1982). (Énfasis suplido)

PETICIÓN DE MANDAMUS

AL HONORABLE TRIBUNAL DE PRIMERA INSTANCIA:

COMPARECE el Peticionario, Sr. Manuel Martínez Umpierre (en adelante "Sr. Martínez Umpierre) por conducto de su representación legal que suscribe y, respetuosamente solicita que este Honorable Tribunal de Primera Instancia(en lo sucesivo "TPI"), emita Auto de *Mandamus* ordenando a la Oficina del Comisionado de Instituciones Financieras de Puerto Rico (en lo sucesivo "OCIF") y /o a su Comisionado, Licenciado Rafael Blanco LaTorre, a entregar copia fiel y exacta de los Exhibits A, B y C de cierto *Settlement Agreement*, que se otorgó entre OCIF y UBS Financial Services Incorporated of Puerto Rico (en lo sucesivo "UBS"), así como copia fiel y exacta de los informes y hallazgos producto de la investigación que condujo al otorgamiento de dicho acuerdo. Se debe ordenar también al Comisionado, que produzca copia de todo documento, incluyendo sin limitación, comunicaciones electrónicas, si alguna, producida por UBS a la OCIF, en el curso de la investigación ya realizada.

Dicho acuerdo de transacción ("Settlement Agreement"), fue suscrito el pasado 9 de octubre entre la OCIF y UBS, y el mismo, al igual que los anejos, deben estar disponibles para la revisión de los miles de otros clientes de UBS, como lo es el Sr. Martínez Umpierre, y el pueblo en general al amparo del derecho fundamental de acceso a la información pública.

INTRODUCCIÓN

Es de conocimiento general, y según ha sido reconocido públicamente por la propia OFIC y su Comisionado, **que los inversionistas puertorriqueños que invirtieron en Fondos Mutuos Cerrados de UBS y otras firmas, han sufrido una pérdida que asciende a los \$6,000 millones.** Más allá, el propio UBS ha publicado en su reporte financiero del tercer trimestre del año 2014, que ya ha recibido reclamaciones derivadas de los Fondos Mutuos Cerrados ("*Closed End Funds*", por sus siglas en inglés), todas de clientes de Puerto Rico, que excede los **\$900 millones de dólares¹.**

Dicho lo anterior, es menester reconocer el mérito de la labor realizada por OCIF. Dicha oficina llevó a cabo una investigación a un enorme conglomerado financiero que cuenta con incalculables recursos económicos como lo es UBS. Sin lugar a duda, el lograr que UBS aceptara llegar a un acuerdo y pagar la cantidad de \$3.5 millones para terminar con la investigación, aunque parezca proporcionalmente muy baja, es una actuación sin precedentes. En adición, UBS se compromete a compensar las pérdidas de una pequeña muestra de sólo 34 de sus clientes. Además, se identificaron a por lo menos seis (6) corredores ("*brokers*") que han incurrido en graves faltas, y a los que UBS se compromete a mantener bajo una estricta supervisión ("*enhanced supervision*").

Es menester destacar que la cultura corporativa de UBS, tanto en Puerto Rico como internacionalmente, está plagada de escándalos y crasas violaciones de ley. Ya en Puerto Rico tuvieron que pagar una multa de 25.5 millones de dólares, más intereses que le impuso la "*Securities and Exchange Commission*" (SEC). Véase documento titulado "*Securities and Exchange Commission's Administrative Proceeding no. 3-14863, In the*

¹ UBS Third Quarter Report 2014, p. 150 (EXHIBIT 8) -
http://www.ubs.com/global/en/about_ubs/investor_relations/other_filings/sec.html

Matter of UBS Financial Services Incorporated of Puerto Rico", fechado 1^o de mayo de 2012 (ANEJO 1). Véase, además, el artículo titulado "*UBS Boosts Legal War Chest as it Pursues Currency Rigging Talks*" - www.reuters.com/article/2014/10/28 (ANEJO 2), que informa que UBS está reservando 1.9 billones de dólares, por motivo de una investigación relacionada a manipulación ("*rigging*") de divisas ("*currency*"). Se informa también que en Francia, UBS está siendo investigada, por ayudar a sus clientes acaudalados a evadir impuestos y las autoridades (Magistrados), allí han propuesto que UBS pague una multa de 4.88 billones de Euros. Obsérvese, además, que UBS, junto con otros bancos, también es objeto de una investigación por parte del gobierno de Gran Bretaña y que se espera que esa transacción podría costarles 3.2 billones de dólares.

Sin duda, lo llevado a cabo por el Comisionado y la OCIF, podría ser un gran comienzo para beneficio de los miles de otros clientes de UBS, que en idénticas o similares circunstancias, han perdido sus inversiones, su retiro, y en muchos casos, su única fuente de sobrevivencia, a los fines de que tengan esperanza de que también podrán recuperar sus pérdidas. De igual manera, el "Settlement Agreement" entre la OCIF y UBS, crea una única oportunidad para que todos los demás clientes puedan reclamarle con efectividad y prontitud a UBS una indemnización de sus billonarias pérdidas, a consecuencia de los actos fraudulentos y engañosos en que incurrieron tanto los corredores ("*brokers*"), como la Gerencia, y que tuvo la consecuencia de que miles de puertorriqueños tuvieron cuantiosas pérdidas.

Uno de los clientes de UBS, el Peticionario compareciente, Sr. Martínez Umpierre, acude mediante el presente escrito ante este Tribunal, ya que existe un derecho innegable y fundamental garantizado por la propia Constitución, a tener acceso a la información que recopiló en su investigación la OCIF. Esto, ante la negativa de la Agencia y el Comisionado, a proveer la misma, so pretexto de confidencialidad de sus hallazgos y el acuerdo suscrito, creando una muy seria suspicacia en el público inversionista y el cuestionamiento de las transparencias que debe permear en torno a las gestiones fiscalizadoras de dicha Agencia.

El Peticionario compareciente, además de miles de clientes de UBS en Puerto Rico, necesitan saber quiénes fueron los beneficiados por dicho acuerdo, cuál era su perfil de inversión, que justificó que UBS le pagara la totalidad de sus pérdidas, y además, deben conocer quiénes son los corredores ("*brokers*") que serán puestos bajo supervisión estricta ("*enhanced supervision*") por parte de UBS. De igual manera y más importante aún, es necesario e imprescindible que tanto el Demandante, como otros miles de clientes puertorriqueños de UBS, tengan conocimiento y se beneficien de los hallazgos encontrados por la OCIF, y no tan sólo los 34 clientes agraciados por el "*Settlement Agreement*". Por otro lado, no existe justificación alguna en ley que pueda invocar OCIF para negarse a revelar la información aquí solicitada, en torno a una investigación ya concluida, según se reconoce por ambas partes en el propio "*Settlement Agreement*". Urge que este Ilustre foro vindique el derecho del Pueblo y de miles de otros clientes de UBS, a estar informados de todos los pormenores de esta investigación y de conocer y enterarse de los detalles del acuerdo entre OCIF y UBS, según se expondrá en el presente escrito. Veamos.

I. LAS PARTES

A. Parte Peticionaria

1.1 La parte Peticionaria, Manuel Martínez Umpierre, es mayor de edad, casado, abogado y vecino de Arecibo, Puerto Rico. Su dirección postal es Apartado 376, Arecibo, Puerto Rico, 00612. Su dirección física es Avenida José A. Cedeño 349, Arecibo, Puerto Rico 00613. Su teléfono es el (787) 878-5551.

1.2 En el presente recurso, el Sr. Martínez Umpierre comparece en su carácter personal, como cliente de la corporación UBS y como ciudadano del Estado Libre Asociado de Puerto Rico (en adelante "ELA"). De igual manera, su legitimación para incoar el presente recurso dimana del Art. 409 del Código de Enjuiciamiento Civil, 32 L.P.R.A., § 1781, el cual reconoce el derecho que tiene todo ciudadano de acceso a la información pública en poder del Estado y su jurisprudencia interpretativa citada más adelante. De igual manera, el ordenamiento jurídico vigente le extiende un derecho a inspeccionar y obtener copia de cualquier documento público de Puerto Rico.

B. Parte Demandada

1.3 La parte co- Demandada, Oficina de Comisionado de Instituciones Financieras, (en adelante "OCIF") es una corporación pública, con capacidad para demandar y ser demandada en virtud de ley. Su dirección es: Ave. Ponce de León 1492, Edif. Centro Europa, suite 600, Santurce, PR 00910, y postal es: Po Box 11855, San Juan, Puerto Rico, 00910-3855. El teléfono es 787-723-3131.

1.4 El Co-Demandado, Licenciado Rafael Blanco LaTorre, es el Comisionado de la OCIF, (en adelante el "Comisionado") es mayor de edad. Su dirección es: Ave. Ponce de León 1492, Edif. Centro Europa, suite 600, Santurce, PR 00910, y postal es: Po Box 11855, San Juan, Puerto Rico, 00910-3855. El teléfono es 787-723-3131.

II. DISPOSICIONES LEGALES APLICABLES AL USO DEL RECURSO DE MANDAMUS

2.1 La Regla 54 de las de Procedimiento Civil vigentes, 32 L.P.R.A., Ap. V, R. 54, incorpora el remedio perentorio del *Mandamus* y establece la facultad del tribunal para ordenar y conceder el remedio que aquí se solicita. A tenor con el Art. 649 y siguientes del Código de Enjuiciamiento Civil, 32 L.P.R.A. § 3421 et seq., el recurso de mandamus es un auto discrecional y altamente privilegiado, mediante el cual se ordena a una persona o personas naturales, al cumplimiento de un acto que está dentro del marco de sus deberes y atribuciones.

2.2 El recurso extraordinario de Mandamus está concebido para obligar a cualquier persona, corporación, junta o tribunal a cumplir un acto que la ley le ordena como un deber resultante de un empleo, cargo o función pública, cuando ese deber no admite discreción en su ejercicio, sino que es ministerial. Véase David Rivé Rivera, El Mandamus en Puerto Rico, 46 Rev. C. Abo. P.R. 15, 19. (1985).

III. RELACIÓN DE HECHOS

3.1 El pasado 9 de octubre, el Comisionado cursó un Comunicado de Prensa, en el que informó *inter alia*, que, en cumplimiento con las disposiciones de la Ley Número 60 (Ley Uniforme de Valores, *infra*) el Reglamento Número 6078 de dicha Ley, así como de cualquier otra disposición en ley bajo los poderes de la OCIF en torno a la oferta, venta o compra de fondos mutuos cerrados bajo la administración de UBS, la OCIF llevó a cabo un examen de las operaciones de UBS. (Véase ANEJO 4).

3.2 Surge del Comunicado de Prensa que la OFIC hizo una investigación, recopiló y analizó *cierta* data, mediante entrevistas a una muestra representativa de clientes de UBS de perfil de tolerancia de riesgo conservadora y con un nivel significativo de inversiones en los Fondos Mutuos Cerrados, y concluye que UBS pudo haber permitido o recomendado la otorgación de líneas de crédito o préstamos para la compra indebida de acciones en dichos Fondos Mutuos Cerrados. La OCIF reconoció que se percató de "posibles" irregularidades en el manejo de las cuentas y récords de los clientes, así como falta de supervisión adecuada y diligente por parte de la gerencia UBS a sus agentes.

3.3 Sin embargo, y en ánimo de dar por terminada la investigación y restituir de forma expedita a tan sólo 34 de los clientes de UBS que sufrieron pérdidas en su inversión en los Fondos Mutuos Cerrados, UBS y OCIF entraron en un acuerdo, en virtud del cual UBS desembolsará la cantidad de \$5,181,742.00, consistente en restitución a los clientes seleccionados, por la cantidad de \$1,681.742.00 y una "aportación" de \$3,500,000 al Fondo de Educación al Inversionista ("FONDO"), adscrito a la OCIF. Ni tan siquiera se identificó que la cantidad asignada al Fondo fuese, en efecto, de una multa o penalidad impuesta por OCIF, como resultado de las violaciones o faltas que se describen en el "*Settlement Agreement*". Paradójicamente, cuando UBS le reporta a su entidad reglamentadora en Estados Unidos, la "*Financial Institutions Regular Authority*" (FINRA, por sus siglas en inglés), sobre lo acontecido, como resultado de la investigación de OCIF, UBS lo identifica como una multa ("*Sanctions Ordered: Monetary/Fine \$5,181,742.00*")².

3.4 El referido "*Settlement Agreement*", suscrito el día 9 de octubre de 2014, entre el Comisionado y el presidente de UBS (Ver ANEJO 5), identifica varios hallazgos y recomendaciones por parte de la OCIF. Veamos:

- (i) OCIF halló que ciertos corredores ("brokers") de UBS pudieron haber hecho transacciones y/o ejercido poderes discrecionales **sin autorización** de los clientes, así como **recomendaciones inapropiadas**

² Véase página 37 (ANEJO 3) del "*BrokerCheck Report*", presentado a FINRA por UBS - www.finra.org/brokercheck.

de dichos corredores a los clientes - [*“...the OCIF... found that in some instances, Certain Brokers may have made transactions in their clients’ accounts without obtaining prior authorization, or exercised discretionary power in effecting certain transactions for the clients’ accounts without first obtaining written authority from the customers...”*].

(ii) OCIF encontró que UBS pudo haber fallado en mantener sus registros adecuados y/o correctos, de conformidad con la información de los clientes y las actividades realizadas por los corredores. De igual manera, UBS omitió mantener y poner en vigor procesos adecuados de supervisión - [*“...OCIF... found that UBS may have failed to maintain accurate books and records in connection with certain customers’ information and the activities of the Certain Brokers...”*] y supervisión [*“...OCIF... found that in certain instances, UBS may have failed to maintain and enforce appropriate supervisory procedures in connection with certain client transactions during January 1st, 2006 to May 31st, 2010...”*].

(iii) Sin admitir responsabilidad alguna, UBS y la OCIF acordaron ofrecer devolver sus pérdidas a ciertos clientes, a cambio de relevos y acuerdos entre esos clientes y UBS, y los cuales se ejecutarán en los predios de la OCIF. **Este compromiso se recoge en el Exhibit A del Settlement Agreement.**

(iv) UBS se comprometió a emitir un cheque al Secretario de Hacienda por la cantidad de \$3.5 millones de dólares que “contribuirá” al *Securities Trading, Investor’s Education and Investigation Fund* de la OCIF.

(v) En un período de seis (6) meses desde la ejecución del Settlement Agreement, UBS conducirá una revisión “confidencial” de las cuentas de los clientes (el Peticionario muy bien pudiese ser uno de esos clientes cuya identidad se mantiene oculta) a los fines de determinar si alguna

otra acción adicional o restitución es requerida y/o necesaria. Los parámetros para identificar a esos clientes a quienes se les hará dicha revisión "confidencial" interna se especifican en el *Exhibit B* del referido Settlement.

(vi) Basado en las alegaciones de varios clientes, UBS pondría, por un periodo de seis (6) meses que automáticamente se extenderá a seis (6) meses adicionales, a ciertos corredores ("brokers") no identificados, bajo una supervisión intensificada ("enhanced supervisión"). Dicho corredores están identificados en el *Exhibit C* del acuerdo, el cual se mantiene confidencial. Algunos de esos "brokers" pudiesen, en la actualidad, estar prestando servicios al Peticionario compareciente.

3.5 Así las cosas, el 15 de octubre de 2014, la representación legal del Sr. Manuel Martínez Umpierre que suscribe, cursó carta al Comisionado en la que se indicó que, dentro de la investigación llevada a cabo por OCIF que culminó con el acuerdo de transacción, se entrevistaron a un sinnúmero de otros clientes de UBS, algunos de ellos representados por el suscrito, los cuales no obtendrían beneficio alguno ni tampoco sus pérdidas serían reembolsadas tal y como ocurrió con los 34 clientes selectos que se benefician de la transacción. De igual manera, se señaló que la pérdida de valor ocasionada por las serias y graves violaciones de Ley identificadas por el propio Comisionado y descritas en el "Settlement Agreement", sobrepasan los \$6,000 millones de dólares. (Ver ANEJO 6).

3.6 A esos fines, se requirió del Comisionado que proveyese copia de los Exhibits A, B y C del referido "Settlement Agreement", así como de cada uno de los informes rendidos por los investigadores de la OCIF, relacionados con sus hallazgos. Esta solicitud se hizo a los fines de que los clientes que no fueron beneficiados por el acuerdo, entre los que se encuentra el Peticionario aquí compareciente, puedan tener acceso a esos Exhibits y a los informes producto de esos hallazgos, para así poder tomar decisiones informadas en cuanto a sus reclamaciones o posibles reclamaciones en contra de UBS. Más aún, el Peticionario tiene derecho a saber si su corredor ("broker"), fue objeto de alguno de los hallazgos del Comisionado.

3.7 Basado en lo anterior, se le requirió a OCIF mediante la carta enviada el 15 de octubre de 2014, que aparte de los Exhibits A, B y C del "Settlement Agreement", proveyera copia de todo informe relacionado a:

(i) hallazgo que se refiere a las recomendaciones inapropiadas de los corredores a sus clientes [*"...the OCIF... found that Certain Brokers may have engaged in the recommendation and trading of potentially large amounts of one or more similar closed - end funds in relation to such clients' liquid net assets given their conservative investment objectives, risk tolerance and more modest financial profile..."*];

(ii) hallazgo que identifica que ciertos corredores ("*Certain Brokers*"), incurrieron en transacciones sin obtener la previa autorización del cliente [*"...the OCIF... found that in some instances, Certain Brokers may have made transactions in their clients' accounts without obtaining prior authorization, or exercised discretionary power in effecting certain transactions for the clients' accounts without first obtaining written authority from the customers..."*];

(iii) hallazgo que UBS omitió mantener y poner en vigor procesos adecuados de supervisión [*"...OCIF... found that in certain instances, UBS may have failed to maintain and enforce appropriate supervisory procedures in connection with certain client transactions during January 1st, 2006 to May 31st, 2010..."*]; y,

(iv) hallazgo que determinó que UBS no mantuvo récords adecuados [*"...OCIF... found that UBS may have failed to maintain accurate books and records in connection with certain customers' information and the activities of the Certain Brokers..."*].

3.8 Esta solicitud hecha a OCIF, se hizo en virtud del derecho que poseen estos clientes y miles de otros, todos puertorriqueños, que aún no se han identificados, a tener acceso a la información en manos del gobierno. Especialmente, información relacionada a la industria de valores, la cual es una altamente regulada, tal y como ha sido reconocido por parte de los Tribunales, tiene un claro deber de transparencia y de proveer información a sus inversionistas.

3.9 Sin embargo, el 17 de octubre de 2014, el Comisionado denegó la solicitud de entregar copia de los exhibits y los informes preparados por los investigadores de la OCIF, aduciendo que los mismos son de carácter confidencial. En apoyo de su denegatoria, aludió la Ley 4, *infra*, la Ley 60, *infra* y el Reglamento 6078, *infra*, adoptado para implementar las disposiciones de la Ley 60, *infra*. (Ver ANEJO 7). La negativa de la OCIF y del Comisionado a entregar la información y documentación requerida, es contraria a derecho.

3.10 Por lo antes expuesto, el Sr. Martínez Umpierre muy respetuosamente, mediante el presente recurso extraordinario de Mandamus, solicita que este Honorable Tribunal ordene a la OCIF, tal y como tiene el deber de hacerlo, entregar la documentación solicitada, así como a dar cumplimiento al mandato constitucional del acceso a la información a los ciudadanos y clientes inversionistas de la institución financiera UBS.

IV. DERECHO APLICABLE Y ARGUMENTACIÓN

4.1 La Ley número 4 del 11 de octubre de 1985, según enmendada, conocida como la Ley de la Oficina de Instituciones Financieras, 7 L.P.R.A. § 2001 et seq., (en adelante "Ley 4") tiene como fin primordial proteger a los clientes, acreedores o accionistas de instituciones financieras que operan en Puerto Rico, contra actuaciones ilegales y fraudulentas. Con el propósito de cumplir con ello, la Ley 4 delegó en la OCIF la facultad de reglamentar sus procedimientos y normas de trabajo, así como atender investigar y resolver querellas; e imponer multas administrativas por violaciones a las leyes que administra o a las reglas, reglamentos u órdenes emitidas y aprobadas por ésta. Véase Art. 10 de la Ley 4, *supra*.

4.2 Entre estas leyes que administra la OFIC, se encuentra la ley número 60 del 18 de junio de 1963, según enmendada, conocida como la Ley Uniforme de Valores, 10 L.P.R.A., § 851 et seq., la cual, tiene el propósito de "proteger a los inversionistas y al público en general mediante la exigencia de ciertos requisitos a las personas que se dediquen al negocio de valores y la creación de un organismo gubernamental con poderes de supervisión y fiscalización sobre diversas fases del negocio, **a los fines de evitar que se incurra en prácticas fraudulentas en el curso del mismo.**" Véase Olivella Zalduondo v. Triple S, 187 D.P.R., 625 (2013). (énfasis suplido)

4.3 Cabe destacar que, según se discutió en ese mismo caso de Oliveras, *supra*, página 643, posterior a resuelto el caso de PaineWebber v. First Boston, Inc., 136 D.P.R. 541 (1994) se presentó un Informe Conjunto de las Comisiones de lo Jurídico Civil e Industrias y Comercio del Senado de Puerto Rico, 17 Diario de Sesiones, T. 4, pp. 1629-1630 del Senado, que tuvo como consecuencia una enmienda posterior a la Ley

Uniforme de Valores. "En ese entonces, había la preocupación de que en Puerto Rico, no se había tenido hasta el presente ningún problema serio relacionado con prácticas fraudulentas en el mercado de valores. No obstante, debemos prevenir para que ello no ocurra en el futuro." *Id.* **Lamentablemente, lo que se anticipó en el referido Informe Conjunto, está ocurriendo en el presente y precisamente el promotor lo es UBS con quien la OFIC acaba de firmar el mencionado acuerdo transaccional.**

4.4 No obstante, OFIC, en virtud de esa misma ley, rehúsa entregar los hallazgos producto de la investigación realizada por oficiales e investigadores de la OCIF a UBS, invocando la § 886 de la Ley 60, *supra* e indicando que son de carácter confidencial. A esos fines citó e interpretó incorrectamente la referida sección:

...(b) será ilegal para el **Comisionado o cualquiera de sus oficiales o empleados usar para beneficio personal** cualquier información que haya sido archivada con u obtenida por el Comisionado y que no haya sido hecha pública. Ninguna disposición de [...esta ley] autoriza al Comisionado, ni a ninguno de sus oficiales o empleados, a revelar ninguna de esa información **excepto** entre ellos mismos o **cuando sea necesario o apropiado en un procedimiento o investigación de acuerdo con las disposiciones de [...esta Ley]...**(Ver ANEJO 7).

(Énfasis nuestro).

4.5 Ciertamente, el requerimiento de los documentos que se hizo por parte de los clientes e inversionistas de UBS, **no es para el beneficio personal del Comisionado, o sus oficiales o empleados**, sino para beneficio del público en general, ante la posibilidad de que sea cada vez más el número de los perjudicados por las prácticas ilegales y engañosas llevadas a cabo por UBS. Dichas prácticas, los responsables de las mismas y el proceso a seguir por parte de UBS para determinar posibles víctimas, **están siendo ocultadas injustificadamente por parte de la OFIC**, al ésta negarse a proveer, o lo que es peor aún, aceptar firmar un acuerdo de confidencialidad, en contra de sus deberes y responsabilidades para ocultar los hallazgos de la investigación llevada a cabo por parte de dicha agencia fiscalizadora. ¿Para beneficio de quien OCIF hizo y cerró esta investigación? ¿A que intereses responde? ¿Por qué tanta secretividad? ¿A quién o quiénes se está protegiendo, manteniendo la confidencialidad que pretende el Comisionado? Más aún, dicha opacidad en ninguna forma es necesaria o apropiada en procedimiento o investigación alguna, de acuerdo con las disposiciones de la Ley 60, *supra*.

4.6 Urge que este Tribunal ordene a la OCIF a cumplir con el claro mandato que por ley recae sobre ésta a los fines de vindicar los derechos de los miles de puertorriqueños que obtienen servicios de la industria financiera, en este caso, el de los clientes y consumidores de UBS y que proceda a entregar todos y cada uno de los informes de los hallazgos, producto de la investigación llevada a cabo, con copia de los Exhibits que se identifican como A, B y C en el acuerdo habido, así como todo documento, incluyendo, comunicaciones electrónicas, si alguna, sometido por UBS a la OCIF, en el curso de la investigación.

4.7 Por otro lado, el Reglamento 6078 adoptado dentro de las facultades del Comisionado a los fines de implementar las disposiciones de la Ley 60, *supra*, en su Artículo 25, Prácticas Deshonestas y Anti-Éticas en el Negocio de Valores, específicamente en el acápite 25.6.9,³ indica que los siguientes actos constituyen prácticas deshonestas o anti-éticas:

...

Omitir divulgar a cualquier cliente o cliente prospectivo todos los hechos materiales con respecto a un evento legal o disciplinario el cual es material para la evaluación de la integridad del asesor de inversiones o su capacidad para cumplir con sus obligaciones contractuales con sus clientes. Para propósitos de este inciso, los siguientes eventos legales o disciplinarios relacionados con el asesor de inversiones o persona de la administración del asesor que no fueron resueltos a favor de dicha persona, o que no fueron posteriormente revocados, suspendidos o dejados sin efecto, son materiales por 10 años a partir del evento. (Énfasis suplido)⁴

4.8 Queda meridianamente claro cuáles son los deberes de divulgación de UBS, así como las funciones que tiene que llevar a cabo el Comisionado una vez determina que están ocurriendo prácticas fraudulentas y/o engañosas por parte de una institución financiera. De la investigación llevada a cabo, en el más injustificable manto de secretividad y confidencialidad, se le ocultan a los miles de clientes afectados por dichas prácticas el contenido y los hallazgos de la misma. La OCIF es una agencia del Gobierno de Puerto Rico que tiene el deber de corregir, investigar y sancionar a entidades como UBS, que incurrieron en prácticas ilegales en perjuicio de los intereses

³De una simple lectura del artículo 25, es evidente la abarcadora protección dirigida al cliente, siendo esta palabra mencionada sobre 25 veces en dicho artículo.

⁴No olvidemos que ante FINRA, UBS reporta el resultado como una multa ("*Fine*"). Claramente es un asunto "legal o disciplinario", que resulta en un "evento legal o disciplinario".

de los ciudadanos del país. Del Comunicado de Prensa emitido por la OCIF (ANEJO 4) surge que, los resultados de la investigación concluyeron con un acuerdo transaccional ("Settlement Agreement") (ANEJO 5). A este punto, resulta lógico cuestionarse la capacidad de la OCIF a llegar a acuerdos transaccionales confidenciales con una entidad financiera que actuó ilegalmente y en perjuicio de los clientes que fueron defraudados, cuyo contenido y condiciones se mantienen en el secreto. Los hallazgos de la entidad OCIF son y tienen que ser públicos y accesibles a todos los clientes de UBS en Puerto Rico.

4.9 **No se le puede denegar al Peticionario, así como a miles de clientes puertorriqueños de UBS, el derecho constitucional de acceso a la información pública.** Si la OFIC pretende sostener, como ya indicó en su respuesta a la solicitud (ANEJO 4) que el producto de su investigación es de carácter confidencial, amparándose en la Ley Uniforme de Valores, *supra*, o en su Reglamento, *supra*, dicha posición debe ser rechazada por este Foro Judicial, por ser claramente contraria a esa Ley de Valores.

4.10 Por otro lado, sabido es que "toda legislación que pretenda ocultar información a un ciudadano bajo el palio de confidencialidad debe ser interpretada restrictivamente a favor del derecho del pueblo a mantenerse informado." Soto v. Giménez Muñoz, et als, 112 D.P.R. 477 (1982).

4.11 En Puerto Rico existe el derecho fundamental de acceso a la información pública en manos del gobierno. Colón Cabrera v. Caribbean Petroleum, 170 D.P.R. 582 (2007), Nieves v. Junta, 160 D.P.R. 97 (2003). Este derecho quedó vinculado estrechamente con los derechos a la libertad de expresión, asociación y el derecho de los ciudadanos a pedir del Gobierno la reparación de agravios, por tanto, el derecho a la información pública ha quedado plasmado como uno fundamental. A esos fines, véase Soto v. Giménez Muñoz, supra, y Ortíz Rivera v. Bauermeister, et als, 152 D.P.R. 161 (2000).

4.12 Sin este derecho ya reconocido como fundamental, los ciudadanos no estarían en posición de poder juzgar las actuaciones gubernamentales. Estos son principios medulares que alimentan y sostienen el sistema democrático que con tanto ahínco se defiende. Nieves v. Junta, supra.

4.13 Por tal razón, la secretividad de la información gubernamental es la excepción y **no la norma**. El más Alto Foro Judicial del país indicó que:

[El] Estado, incluyendo la Rama Judicial, **sólo puede reclamar válidamente la secretividad de información pública en un número limitado de supuestos**, a saber, cuando: (1) una ley (o un reglamento) así específicamente lo declara; (2) la comunicación está protegida por alguno de los privilegios evidenciarios que pueden invocar los ciudadanos; (3) revelar la información puede lesionar derechos fundamentales de terceros; (4) se trate de la identidad de un confidente conforme a la Regla 32 de Evidencia, 32 L.P.R.A. Ap. IV; o (5) sea información oficial conforme a la Regla 31 de Evidencia. (Énfasis suplido). Ortiz Rivera, et al vs. Bauermeister, et al, supra.

4.14 Por consiguiente, al no existir razón de peso alguna para que la OCIF se rehúse a brindar la información solicitada a los ciudadanos clientes de UBS, tal y como lo es el Sr. Martínez Umpierre, la información solicitada y producto la propia investigación realizada por dicha agencia, debe ser revelada sin mayor dilación. Tampoco existe justificación para mantener los detalles y el contenido de dicha investigación bajo un manto de secretividad, lastimando los principios generales de transparencia y acceso a la información que deben permear en todo proceso democrático. Por ejemplo, en Ortiz Rivera v. Bauermeister, supra, el Tribunal Supremo señaló a la página 178 lo siguiente:

*“...Cuando el gobierno invoca una ley o reglamento como fundamento para negar al ciudadano el acceso a información pública, la regulación debe satisfacer un escrutinio judicial **estricto**.”*

. . .

Y más adelante a la página 183, se indicó lo siguiente:

Culminada la fase investigativa del procedimiento disciplinario en una determinación final, sea de causa probable o de archivo, cobra preeminencia el interés de la ciudadanía en fiscalizar el buen funcionamiento de los procedimientos disciplinarios diseñados para asegurar que los jueces sean, en realidad, personas honorables y que desempeñan debidamente sus funciones...”

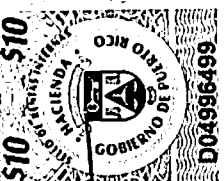
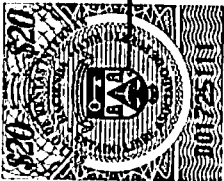
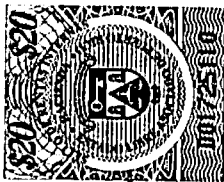
(Énfasis y subrayado en el original).

4.15 Procede, que este Honorable Tribunal, emita una Orden dirigida a la Oficina del Comisionado de Instituciones Financieras de Puerto Rico a remitir copia fiel y exacta de los exhibits mencionado en el “Settlement Agreement”, a saber Exhibits A, B y C; de todo documento producido por UBS a OCIF, incluyendo comunicaciones

electrónicas, además de todos y cada uno de los informes y de los hallazgos, producto de la investigación realizada a los fines de fiscalizar las acciones fraudulentas y engañosas perpetradas por UBS en detrimento de miles de puertorriqueños clientes de esa corporación.

POR TODO LO CUAL, muy respetuosamente, se solicita de este Honorable Tribunal que expida el auto de *Mandamus*, ordenándole a la OFIC, sin mayor dilación, a llevar a cabo sus labores ministeriales y entregar los documentos ya solicitados y denegados.

En San Juan, Puerto Rico, hoy 31 de octubre de 2014



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JURAMENTO

Yo, **Manuel Martínez Umpierre**, mayor de edad, casado, abogado y vecino de Arecibo, Puerto Rico, bajo el más formal juramento declaro lo siguiente:

1. Que mi nombre y demás circunstancias personales son las anteriormente descritas.
2. Que he leído la Petición de Mandamus que antecede, y todos los hechos allí expuestos son ciertos y me constan de propio y personal conocimiento a base de las gestiones realizadas conducentes a conseguir el contrato transaccional alcanzado.

Y para que así conste, juro y suscribo la presente declaración ante Notario Público en la ciudad de San Juan, Puerto Rico.

En San Juan, Puerto Rico, hoy 31 de octubre de 2014.



MANUEL MARTÍNEZ UMPIERRE

Affidávit Núm. -1061-

Jurado y suscrito ante mí por **Manuel Martínez Umpierre**, de las circunstancias antes descritas, a quien identifico mediante su Licencia de Conducir Número 199048.

En San Juan, Puerto Rico, hoy 31 de octubre de 2014.



NOTARIO PÚBLICO

ANEJO 1

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9318 / May 1, 2012

SECURITIES EXCHANGE ACT OF 1934
Release No. 66893 / May 1, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14863

In the Matter of

UBS FINANCIAL SERVICES INC.
OF PUERTO RICO

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTION 8A OF THE SECURITIES
ACT OF 1933 AND SECTIONS 15(b)
AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against UBS Financial Services Inc. of Puerto Rico ("UBS PR" or "Respondent").

II.

In anticipation of the institution of these proceedings, UBS PR 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 PR consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of the Order and UBS PR's Offer, the Commission finds¹ that:

A. SUMMARY

1. During 2008 and 2009, UBS PR, its former CEO ("CEO") and its Head of Capital Markets ("HCM") made misrepresentations and omissions of material facts to numerous retail customers in Puerto Rico regarding the secondary market liquidity and pricing of UBS PR-affiliated, non-exchange-traded closed-end funds ("CEFs" or "Funds"). For example, UBS PR claimed CEF prices were based on market forces such as supply and demand. However, UBS PR did not disclose that CEF prices were set solely at the discretion of the trading desk. Moreover, although UBS had certain disclosures about liquidity in prospectuses (not supplied to secondary market customers) and on its website, it did not adequately disclose, among other things, that as the dominant CEF broker-dealer, UBS PR controlled the secondary market. In reality, any secondary market sales investors wanted to make depended largely on UBS PR's ability to solicit additional customers or willingness to purchase shares into its inventory.

2. As UBS PR, the CEO and the HCM promoted CEF sales throughout 2008, they knew investor demand was significantly declining relative to supply. For much of 2008, UBS PR purchased millions of dollars of CEF shares into its own inventory while promoting the appearance of a liquid market with stable prices, without disclosing UBS PR's actions were propping up prices and liquidity.

3. But in the spring of 2009, UBS PR's parent firm determined UBS PR's growing CEF inventory represented a financial risk to the firm. The parent company directed UBS PR to substantially reduce its inventory of CEF shares. To accomplish the reduction, UBS PR and the HCM executed a plan, dubbed "Objective: Soft Landing" in one document, in which UBS PR routinely offered and sold its CEF shares at prices that undercut pending customer sell orders.

4. During this period, numerous UBS PR customers were also attempting to sell their holdings but UBS PR's actions effectively prevented certain customers from selling their CEF shares. Between March and September 2009, UBS PR sold about \$35 million, or 75%, of its inventory to investors. At the same time, UBS PR increased its efforts to solicit sales of CEFs while continuing to misrepresent how it was setting secondary market prices and the liquidity of the market. UBS PR also did not disclose its withdrawal of market support. By September 2009, when UBS PR completed its CEF inventory reduction, the market price of certain funds had declined by 10-15%.

¹ The findings herein are made pursuant to UBS PR's Offer and are not binding on any other person or entity in this or any other proceeding.

B. RESPONDENT

5. UBS PR, a Puerto Rico corporation with its principal place of business in Hato Rey, Puerto Rico, is a broker-dealer registered with the Commission since 1982. UBS PR is a subsidiary of UBS Financial Services, Inc. (“UBSFS”). UBS PR is the largest broker-dealer in Puerto Rico, with about 49% of total retail brokerage assets. The firm employs about 230 registered representatives (“financial advisors”) and has nineteen branch offices throughout Puerto Rico.

C. OTHER INDIVIDUALS AND ENTITIES

6. UBSFS is a Delaware corporation with its principal places of business in New York, New York and Weehawken, New Jersey. UBSFS is a wholly-owned subsidiary of UBS AG, a foreign private issuer based in Switzerland.

7. UBS Trust Company of Puerto Rico (“UBS Trust Company”) is not registered with the Commission. It shares offices and certain personnel with UBS PR, and serves as the administrator, transfer agent and custodian to fourteen of the twenty-three CEFs, while a division of UBS Trust Company serves as an investment adviser to all twenty-three CEFs. The CEFs are organized as corporations in Puerto Rico, and are exempt from Commission registration under the U.S. Territories exemption of § 6(a)(1) of the Investment Company Act of 1940. UBS PR personnel also served as members of the board of directors of all 23 CEF companies. The CEF company boards have a majority of independent directors.

D. UBS PR’s MARKETING AND SALES OF CEFS

8. Since 1995, UBS PR has been the primary underwriter of fourteen separately organized closed-end fund companies’ CEFs with a total market capitalization of approximately \$4 billion, and nine co-managed closed-end fund companies’ CEFs with more than \$1 billion in total market capitalization. The CEFs are not traded on an exchange or quoted on any quotation service, and are available only to Puerto Rico residents. The majority of the CEFs’ holdings of Puerto Rico securities are Puerto Rico municipal bonds. UBS PR has been the only secondary market dealer or liquidity provider for the sole-managed Funds and the dominant dealer for several co-managed CEFs.²

9. The CEFs represent the largest single source of revenue for UBS PR. For example, between 2004 and 2008, the CEF business generated 50% of annual total revenues for UBS PR and UBS Trust Company combined, which included Fund advisory and administration fees, and primary and secondary market sales commissions. During 2008, UBS PR’s CEF business produced \$94.5 million in revenue for the firm.

² UBS Trust Company serves as the sole manager for: Puerto Rico Fixed Income Funds I – VI; Puerto Rico Mortgage Backed & US Govt. Fund; Tax-Free Puerto Rico Funds I and II; Tax-Free Puerto Rico Target Maturity Fund; Puerto Rico AAA Portfolio Target Maturity Fund; Puerto Rico AAA Portfolio Bond Funds I and II; and Puerto Rico GNMA & U.S. Gov. Target Maturity Fund. UBS Trust Company serves as co-manager for Puerto Rico Investor’s Tax-Free Funds I – VI, Puerto Rico Tax-Free Target Maturity Fund I and II, and Puerto Rico Investors Bond Fund I.

10. UBS PR marketed its CEFs mainly to its Puerto Rico retail customer base. That customer base included some seniors and retirees, and a number of them who invested in CEFs depended on monthly dividend income from the CEFs to supplement their payments from Social Security.

11. Financial advisors also promoted UBS PR's dividend reinvestment program which was an important selling point of the CEFs. Under this word-of-mouth monthly program, investors could elect to receive dividend reinvestment shares – issued by the CEFs at the Net Asset Value of the Funds (“NAV”) – and immediately sell them back to UBS PR at the then-existing market price, earning premiums of up to 45%. This program was highly attractive to many of UBS PR's senior customers, who depended on the income from their CEF shares.

E. UBS PR, THE CEO AND THE HCM MISREPRESENTED AND OMITTED DISCLOSING MATERIAL FACTS ABOUT THE CEFs

Misrepresentations About CEF Prices

12. UBS PR knew investors were seeking stable, consistently-priced securities to protect their investment or retirement income. UBS PR was also aware that consistently high share prices were important to promoting the dividend reinvestment program which relied on high market price premiums relative to the Funds' NAVs.

13. Throughout 2008 and early 2009, UBS PR priced the CEFs to reduce volatility and maintain high premiums to NAV. UBS PR's pricing of the CEFs was left to the discretion of the HCM and the CEF head trader, who reported to the HCM. At the direction of the HCM, UBS PR used its CEF inventory account to purchase any excess supply of shares for which UBS PR could not find customers.

14. During the same time period, however, UBS PR misrepresented that market forces such as supply and demand determined CEF prices. For example, a January 2008 UBS PR brochure entitled “UBS Family of Funds” posted on the company's website stated that: “[m]arket forces such as supply and demand and the yield of similar type products determine the price of closed end fund shares.”

15. In addition, UBS PR provided CEF prices to the Puerto Rico daily newspaper *El Vocero* to publish those prices in the paper's business section. The newspaper simply listed CEF share “prices.” UBS PR omitted disclosing in the listings the prices represented only what UBS PR termed “indicative” prices. Indicative prices were simply what UBS PR thought the prices should be, but did not represent any commitment by UBS PR to buy or sell at that price. UBS PR's also failed to disclose that the prices included a 3% sales commission.

16. The CEF share prices in UBS PR customers' monthly account statements were similarly misleading in that they described “market values.” As with the newspaper prices, these prices were simply what UBS PR thought they should be, not true market prices.

The 2008-09 CEF Market Imbalance

17. As early as May 2008, the HCM noted a significant supply and demand imbalance in the CEF secondary market, because customers were placing sell orders in increasing numbers. By May 16, UBS PR executives knew the firm had \$37 million of CEF shares in its inventory, approaching the temporarily increased \$40 million limit that had been put in place in late April. In addition, there were \$16 million in unexecuted customer orders to sell shares at prices lower than UBS PR's bid. The HCM acknowledged in an email to senior executives that the trading desk should either execute these customer orders or lower the bid price of the Funds.

18. Rather than reduce CEF prices, for the next several months, the HCM continued to make repeated requests on behalf of UBS PR that UBSFS temporarily increase inventory limits, which increased to \$45 million at the end of July, and to \$50 million in December 2008.

19. Furthermore, on behalf of UBS PR, the HCM made only small changes to CEF share prices once or twice a month during this period. As UBS PR's CEF inventory grew from May through August 2008, the HCM did not change prices for 9 CEFs on any trading day. For example, from May through December, the HCM changed the price of one fund only one time. In the case of another fund, the trading desk quoted the same price every day from May through August 2008, and changed the price on just three trading days through December.

20. These unchanging and consistently high prices in the face of declining NAVs, increased customer selling relative to customer demand, and other unfavorable market conditions were in contrast to the representations of UBS PR that market forces determined CEF share prices.

21. UBS PR attempted to generate customer demand by promoting the CEFs at a UBS PR Investor Conference in June 2008. At that conference, a UBS PR managing director promoted the CEFs' extraordinary "market returns" and low risk and volatility, but failed to disclose that share prices and liquidity were increasingly dependent on UBS PR's support of the CEF secondary market.

22. After the Investor Conference, the HCM directed the CEF head trader to develop sales stories for brokers, regarding particular CEFs for which UBS PR had significant inventory positions. The HCM told the head trader to inform the sales force that the CEF desk was willing to offer the Funds with the highest inventory levels at reduced prices by reducing the typical five-cent-per-share markup the desk got on sales. The head trader met with financial advisors to provide information about those CEFs while omitting to disclose that the funds were those with the highest inventory levels.

23. By August 2008, customer demand for CEF shares was further ebbing. UBS PR's Group Management Board, including the CEO and the HCM, met on August 12. Among other things, the board minutes from that meeting show the attendees discussed the "market drag," "product fatigue," and "weak secondary market" for CEF shares. The CEO expressed uneasiness that financial advisors were concerned about the concentration of customers' investments in CEFs and about the continued CEF offerings.

24. After the board meeting, the CEO directed his subordinates to boost investor demand for CEF shares. On August 29, 2008, he told UBS PR executives “[i]t is clear to me that we have to ‘fix’ this.” He told them to “generate a story for each Fund” that the financial advisors could use to increase sales and facilitate large cross trades between customers, and work with the traders to coordinate bids and offers.

25. Notwithstanding his knowledge of the weak demand for CEF shares in the secondary market, the CEO repeatedly misled UBS PR’s financial advisors throughout the fall of 2008 into continuing to promote CEF sales. In numerous e-mails, he repeatedly misstated the strength, stability and liquidity of the CEF market. The CEO did not disclose to the sales force the liquidity issues in the secondary market, or that UBS PR was keeping the CEF prices high by increasing its CEF inventory.

26. The sales force solicited sales of the CEFs during this period, including two new primary CEF offerings totaling \$66 million. The CEO sent several emails to the UBS PR sales force strongly promoting the anticipated returns of the new offerings while assuring that the offerings would have little if any effect on the CEF secondary market. Yet privately, the CEO told the HCM and other executives he was directing that UBS PR move forward with the primary offerings regardless of UBS PR’s high CEF inventory holdings.

27. UBS PR prepared a presentation to the sales force in connection with the new CEF offerings. This presentation, provided as reasons that customers should invest in the new funds that, among other things, “[f]und inventory levels are low, trading volumes are at all-time high (annualized), and prices/yields are aligned with current market conditions.” These statements were false or misleading given the record high inventory levels and UBS PR’s support of market prices.

28. Although the prospectuses for the two new CEF offerings, which were provided to primary market customers, stated that UBS PR was not obligated to maintain a market in the CEF shares, may discontinue maintaining a market at any time and that in the event it discontinued there may be no other market for the shares, UBS PR failed to disclose material facts to investors: (1) concerning the significant secondary market supply and demand imbalance; (2) that UBS PR was using its inventory account to support CEF market prices and liquidity to prevent price declines and maintain yields; and (3) that CEF prices and liquidity were highly dependent on the efforts of UBS PR’s sales force to maintain customer demand for the shares.

29. The HCM misrepresented material information to the financial advisors during this same time. Prior to the fall of 2008, UBS PR had routinely displayed inventory levels for each CEF in the firm’s inventory sheets that were circulated to its financial advisors. For the entire month leading up to the new offerings, the HCM concealed UBS PR’s increasing inventory from the company’s sales force. He directed the head trader to change the daily CEF inventory sheets sent to financial advisors to reflect a maximum of 50,000 shares per Fund, rather than the actual number of shares the firm owned.

30. Ultimately more than 600 investors purchased shares in the primary offerings. The secondary market continued to experience supply and demand imbalances. UBS PR continued to

purchase shares into inventory throughout the fall of 2008 and early 2009, often from investors who wanted to sell shares they had obtained through the dividend reinvestment program.

F. UBS PR REDUCES ITS INVENTORY BY UNDERCUTTING
CUSTOMER SELL ORDERS

UBSFS Orders UBS PR To Reduce Inventory

31. In February and March 2009, UBS PR's persistently high CEF inventory levels and the CEF shares' significant price premiums over NAV raised concerns of UBSFS' then-Chief Risk Officer ("Chief Risk Officer") and other executives.

32. In March, the HCM emailed a number of UBSFS executives seeking a temporary increase of inventory levels from \$50 to \$55 million to buy shares from customers selling their reinvestment shares. The reason given for the request was because of the supply and demand imbalance in the CEF market.

33. On March 19, UBSFS' Chief Risk Officer rejected the request and directed UBS PR to begin reducing inventory levels to the historical limit of \$30 million. UBS PR executives told a UBSFS senior executive that they expected the imbalance in the Funds market to improve because of economic conditions and because UBS PR would increase demand using its sales force. A senior UBS PR executive added if that strategy failed, UBS PR would use "the ultimate weapon [of] aggressive use of pricing to bring balance back to the market. . . ."

34. Two weeks later, UBSFS' Chief Risk Officer expressed his concern to UBSFS senior executives, that, although a supply and demand imbalance existed in the CEF secondary market, CEF prices remained high with a significant "difference between NAV and the price quoted by the trading desk . . . in some cases over 40%." He further alerted the executives that due to the fact that UBS PR's internal CEF trading limits were already exceeded because UBS PR had not yet reduced its inventory to its permanent limit, "there is a significant likelihood that clients wishing to sell the shares received through the dividend reinvestment program will be unable to do so."

35. As a result, the senior executives directed a review of UBS PR's pricing method for the market values of the CEFs. After conducting their review, on May 19, 2009, the then-Head of Wealth Management Advisor Group ("Head of WMAG") and the Chief Risk Officer reported:

- UBS PR was the sole CEF liquidity provider;
- UBS PR should reduce its CEF inventory to limit its risk exposure and "promote more rational pricing and more clarity to clients . . . [so] prices transparently develop based on supply and demand;" and,
- UBS PR ran a significant concentration risk that was inherent to the CEF business, which could not "effectively be reduced."

36. UBSFS' Risk Control Committee mandated further reductions to inventory limits as a result of this review. On May 29, 2009, UBSFS' Chief Risk Officer directed UBS PR to further reduce its CEF inventory to \$12 million.

*UBS PR Reduced The Firm's Inventory By Undercutting
Pending Customer Sell Orders*

37. In response, in June 2009, the HCM made a presentation to members of UBSFS' Risk Committee in which he described UBS PR's strategy to reduce its inventory and bring prices in-line with NAVs as "Objective: Soft Landing." In a subsequent email to members of UBSFS' Risk Committee and the CEO, the HCM described the firm's strategy as: "1. [p]urchasing from clients the minimum amount of shares possible," and "2. [l]owering our price to keep ahead of any client open orders in terms of lowest offer price in the market."

38. Over the course of the next few months, the HCM and UBS PR pursued this strategy to execute UBSFS' directive and reduce its inventory by:

- Lowering CEF prices to undercut the pending customer sell orders in the firm's Good-Til-Cancelled ("GTC") order book;
- Soliciting new and existing customers to buy CEF shares without disclosing UBS PR's decision to reduce its inventory by lowering CEF share prices below customer orders;
- Limiting UBS PR's inventory purchases to dividend reinvestment share sellers; and,
- Arranging transactions in conjunction with offers by the affiliated CEF companies to repurchase newly issued shares from customers, so UBS PR could sell to those customers shares from the firm's aged inventory.

39. The HCM and the head trader discouraged financial advisors from placing market orders, which UBS PR had to execute before reducing its own position, by telling financial advisors that customers might not receive the best execution price. Numerous CEF customers (many of whom were unsophisticated retail clients) did not know the difference between market and limit orders. Thus, to comply with the trading desk's directives, the financial advisors placed the vast majority of sell orders as limit orders.

40. UBS PR's trading policy directed the firm to treat "marketable" limit orders, i.e., orders at or better than UBS PR's bid prices, like market orders. However, commencing in March 2009, the HCM directed the head trader to regularly eliminate pending marketable limit orders by reducing CEF prices to just below the customers' pending sell orders, to sell UBS PR's CEF inventory first.

41. For example, on March 3, 2009, UBS PR sent its GTC book to the sales force showing \$16 million in marketable, unexecuted customer sell orders. That day, the HCM instructed the head trader to "prepare a pricing where we eliminate the marketable GTC [customer] orders . . . This is top priority."

42. A few hours later, the head trader lowered market prices of 15 of the 23 funds to one penny below the best customer orders, rendering \$14 million of customer orders “non-marketable.” The GTC book the HCM and the head trader sent to financial advisors on March 4 reflected only \$2 million in marketable, unexecuted customer orders.

UBS PR Misrepresented Its Support of the CEF Market and Failed To Disclose Its Conflicts Of Interest to CEF Investors

43. UBS PR did not disclose to its customers it was substantially reducing the use of its inventory to support the CEF market. UBS PR also continued to accept customer limit orders without disclosing that it was undercutting those limit orders to sell UBS PR’s shares first. UBS PR also failed to disclose the conflict of interest created by recommending CEFs to investors while selling its own shares.

44. UBS PR’s conflicts of interest with its customers were exacerbated because the firm controlled the market for the CEFs, and investors could not go to another broker-dealer to sell their CEF shares. Customers had to compete with UBS PR to sell shares in a market UBS PR dominated and controlled. In addition, some UBS PR customers attempting to sell CEF shares during this time were senior retail investors who had substantial amounts of their net worth invested and concentrated in the CEFs.

While UBS PR Was Selling Its Inventory, UBS PR, the CEO and the HCM Pushed Financial Advisors To Boost Demand For CEF Shares

45. On March 31, 2009, UBS PR and the HCM made misrepresentations and omissions to hundreds of customers at a UBS PR Puerto Rico Investor Conference about the CEF’s superior returns and consistent liquidity levels.

46. Before the conference, the CEO urged UBS PR’s sales force to “call your clients, [because] the information presented will offer comfort to holders of Puerto Rico bonds and Funds” (emphasis in original). UBS PR also purchased full-page newspaper advertisements in *El Vocero* as well as television spots promoting the conference. In an e-mail sent on the morning of the conference, the HCM told the CEO and other executives his view that UBS PR should present the message to investors that the secondary market had “shown resiliency (high liquidity, stable price) during these times.” This directly contradicted the HCM’s statements two weeks earlier to UBS PR executives that the market was imbalanced because sellers significantly outnumbered buyers.

47. At the conference, the HCM made a presentation about the CEFs’ secondary trading market. The HCM misrepresented that CEF liquidity was increasing and CEF prices were stable and the result of supply and demand in an open market. In fact, the CEFs were experiencing a significant supply and demand imbalance and UBS PR had been using its own inventory to support CEF prices and disguise the lack of liquidity in the market. Furthermore, the HCM omitted disclosing UBSFS had recently ordered UBS PR to reduce inventory, and that to comply with this directive UBS PR had begun lowering share prices and buying fewer customer shares.

48. During the ensuing months, the CEO and UBS PR tried to create CEF demand while concealing the liquidity problems and inventory reduction. The CEO directed UBS PR's sales force to solicit customers to buy CEFs notwithstanding UBS PR customers' and financial advisors' concerns about CEF prices and liquidity.

49. The CEO further misled investors about the state of the CEF market. In a newspaper interview published in *El Vocero* on April 24, 2009, the CEO specifically addressed the CEF market, stating that in the face of other, poor-performing markets, CEF share prices had been stable and performed well. That same day, the CEO sent an email entitled "Creation of Value" in which he directed financial advisors to tell their customers that the CEFs would continue to trade at significant premiums to NAV and provide the "reinvestment kickers" of the dividend reinvestment program. These statements were made without disclosing the existing secondary market illiquidity, or that UBS PR was significantly reducing CEF market prices in order to sell its inventory.

50. From April to August 2009, UBS PR's executives, including the HCM, conducted multiple sales meetings with financial advisors encouraging them to solicit their customers to invest in the CEFs without disclosing UBS PR's significant inventory reduction and misleadingly blamed falling CEF prices on global economic conditions. During this period, the percentage of investors' CEF purchases that financial advisors solicited increased to approximately 70% to 90%.

51. In August 2009, despite expressing concerns in an email to UBSFS executives that UBS PR's inventory reduction had caused "huge losses" to investors, the CEO sent an e-mail to UBS PR's sales force urging them to "consider the present prices of our Funds" and increasing dividends as a buying opportunity for UBS PR customers. The CEO omitted any mention of UBS PR's inventory or share price reductions, or his belief the inventory reduction had drastically reduced market prices.

52. To assist the firm in selling its inventory, UBS PR also took advantage of a CEF share repurchase program the CEO and other CEF board members authorized. At a UBSFS Executive Committee meeting, UBSFS' Head of WMAG and Chief Risk Officer proposed petitioning the independent board of directors for UBS PR's 14 sole-managed proprietary CEF funds to approve a share repurchase program, which could be used to reduce UBS PR's CEF inventory. On May 27, 2009, the CEO and the other members of the Funds' board of directors approved the repurchase of a higher percentage of the Funds' outstanding shares than the board had previously approved.

53. After the board approved the repurchase, UBS PR and the HCM arranged for UBS PR customers, who had only seven months earlier purchased shares of the two new CEFs, to sell \$7 million of tendered shares back to the Fund companies. That same day, UBS PR solicited those customers to immediately purchase \$7 million of shares from Funds where UBS PR had the highest inventory. UBS PR did not disclose to those customers that a material basis for recommending those specific funds was to reduce UBS PR's largest aged inventory positions.

54. In June 2009, to discourage customer sales of CEF shares, UBS PR instituted a requirement that any customer order to sell over 10,000 CEF shares required approval of a branch office manager.

55. By September 30, UBS PR had reduced its CEF inventory to about \$12 million, the level UBSFS mandated. However, UBS PR's GTC order book on the same day detailed approximately \$72 million in unexecuted customer sell orders that had accumulated over the prior 6 months.

56. When UBS PR sold 75% of its inventory and ceased using its inventory to support the CEF secondary market, prices dropped. From March 3 to September 30, 2009, 21 of 23 CEFs experienced significant price declines. The prices of the seven CEFs with the largest UBS PR inventory positions declined 10% to 15%.

G. VIOLATIONS

57. As a result of the conduct described above, UBS PR willfully violated Section 17(a) of the Securities Act, which prohibits fraudulent conduct in the offer and sale of securities, and Sections 10(b) and 15(c) of the Exchange Act and Exchange Act Rule 10b-5, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

H. UNDERTAKINGS

58. UBS PR agrees to retain, at UBS PR's expense and within sixty days of the issuance of this Order, an independent third-party consultant, not unacceptable to the staff, to review UBS PR's closed-end fund disclosures and trading and pricing policies, procedures, and practices for adequacy. After such review, which UBS PR shall require to be completed within ninety days of the issuance of this Order, UBS PR will submit to the Commission, the findings of the independent consultant making recommendations for any changes in or improvements to UBS PR's policies, procedures, and practices, and a procedure for implementing such recommended changes. Within ninety days of receipt of the report, UBS PR shall adopt the recommendations contained in the report; provided, however, that as to any recommendation that UBS PR considers to be, in whole or in part, unduly burdensome or impractical, UBS PR may submit in writing to the consultant and Commission staff, within thirty days of receiving the report, an alternative policy, practice, or procedure designed to achieve the same objective or purpose. Within forty-five days of receiving the report, UBS PR shall attempt in good faith to reach an agreement relating to each recommendation that UBS PR considers to be unduly burdensome or impractical. Within fifteen days after the discussion and evaluation by UBS PR and the consultant, UBS PR shall require that the consultant inform UBS PR and Commission staff of the consultant's final determination concerning any recommendation that UBS PR considers unduly burdensome or impractical, and UBS PR shall abide by the determinations of the consultant and adopt and implement all recommendations within the ninety-day time period set forth in this paragraph.

59. Within fourteen days of UBS PR's adoption of all of the recommendations that the consultant deems appropriate, UBS PR agrees to certify in writing to the consultant and Commission staff that UBS PR has adopted and implemented all of the consultant's recommendations. Thereafter, UBS PR agrees to require the independent third-party consultant to conduct an annual review for each of the following three years from the date of the issuance of the consultant's initial report, to assess whether UBS PR is complying with the consultant's

recommended policies, procedures, and/or practices that UBS PR adopted and whether the adopted policies, procedures, and/or practices are effective in achieving their stated purposes.

60. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Respondent (i) agrees to use all best efforts to make its principals, partners, officers, and employees available to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Respondent's counsel as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Respondent's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Respondent in any United States District Court for purposes of enforcing any such subpoena.

In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, and Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. UBS PR cease and desist from committing or causing any violations and any future violations of Sections 17(a) of the Securities Act, Sections 10(b) and 15(c) of the Exchange Act, and Rule 10b-5 of the Exchange Act.

B. UBS PR is censured.

C. UBS PR shall, within 14 days of the entry of this Order, pay disgorgement of \$11,500,000.00, prejudgment interest of \$1,109,739.94, and a civil money penalty of \$14,000,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or 31 U.S.C. 3717. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand delivered or mailed to Enterprise Services Center, Accounts Receivable, 6500 S. MacArthur Blvd., Oklahoma City, Oklahoma, 73169; and (D) submitted under cover letter that identifies UBS PR as a Respondent in these proceedings, the file number of these proceedings, a copy of which shall be sent to Jason R. Berkowitz, Division of Enforcement, Securities and Exchange Commission, Miami Regional Office, 801 Brickell Avenue, Suite 1800, Miami, FL 33131.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, interest and/or penalties referenced in Paragraph C above. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it, shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

E. Respondent shall comply with the undertakings enumerated in paragraphs 58 and 59 of Section III above.

By the Commission.

Elizabeth M. Murphy
Secretary

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UBS boosts legal war chest as it pursues currency rigging talks

Tue, Oct 28 2014

By Katharina Bart

ZURICH (Reuters) - UBS put aside 1.8 billion Swiss francs (\$1.9 billion) in the third quarter for potential legal costs and said it was talking to the U.S. Department of Justice about resolving an investigation into currency market rigging.

The increase in legal reserves shows Switzerland's largest bank is struggling to move on from past scandals, including a \$1.5 billion settlement for interest rate rigging and \$885 million to settle claims that UBS defrauded two U.S. government-controlled companies before the 2008 financial crisis.

"We all knew there would be bumps in the road and some of these challenges remain," UBS (UBSN.VX: [Quote](#), [Profile](#), [Research](#), [Stock Buzz](#)) Chief Executive Sergio Ermotti told investors on a call about third-quarter results.

Besides the legal setbacks, the bank's earnings showed signs of health, especially at its flagship private banking division which caters for wealthy clients. It continued to bring in more money and increased profitability.

Authorities around the world are investigating allegations that traders at some major banks rigged the \$5.3 trillion-a-day currency market, the world's biggest but least regulated.

Zurich-based UBS did not link the extra legal reserves, which bring the amount put aside for future litigation to 3.469 billion francs, to the foreign exchange investigations.

But UBS said for the first time it was talking to the U.S. Department of Justice's criminal and anti-trust divisions about how to resolve their investigation into currency rate rigging.

Despite the reserves, UBS beat forecasts for third-quarter net profit with a 32 percent rise from last year, largely due to a 1.3 billion-franc gain from how it accounts for past losses.

"All told, it will take UBS much longer and cost them much more to resolve their past, but at least the bank's business is on track again," said Dirk Becker, an analyst for Kepler Capital Markets who rates UBS as hold with a 17-franc target.

UBS shares climbed 4.7 percent to 16.2 francs at 6.23 a.m. EDT, the best performer in the European banking sector.

DIVIDEND TARGET

The bank is halfway through a three-year drive to focus on private banking, shrink its investment bank and abandon riskier activities such as bond trading. The goal is to pay out at least half of profits to shareholders after hitting capital targets, which is expected this year.

The bank said third-quarter net profit was 762 million francs, exceeding the 737 million francs forecast by analysts in a Reuters poll.

Its private bank brought in 9.8 billion francs in net new money, a key indicator for future revenue. This translates to growth on existing assets of more than 4 percent, healthier than crosstown rival Credit Suisse (CSGN.VX: [Quote](#), [Profile](#), [Research](#), [Stock Buzz](#)).

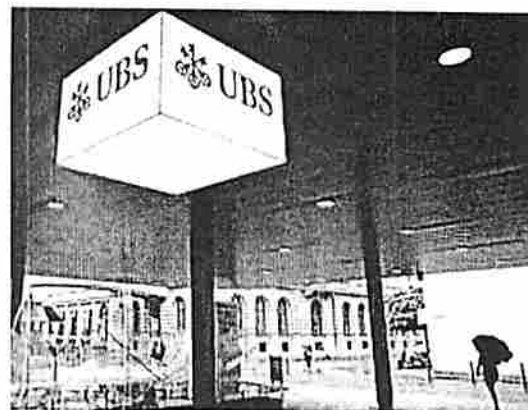
The new funds and a rise in the private bank's margin were the bright spots, according to several analysts. The bank said, however, that the Ebola virus added to a range of concerns, from political tension in Ukraine to fiscal issues in the euro zone, that have kept clients on the sidelines and weighed on income.

Skirmishes with regulators and lawsuits over business dealings have become a mainstay of bank earnings globally following the financial crisis of 2008 and 2009.

"At this point in time, we believe that the industry continues to operate in an environment where charges associated with litigation, regulatory and similar matters will remain elevated for the foreseeable future," UBS said in a statement.

Two weeks ago, U.S. investment bank JPMorgan Chase & Co (JPM.N: [Quote](#), [Profile](#), [Research](#), [Stock Buzz](#)) surprised investors by putting \$1 billion aside to resolve probes into alleged currency rigging.

Britain's financial regulator has intensified talks with six banks, including UBS and JPMorgan, over similar allegations, setting



the stage for a group settlement that could cost them close to 2 billion pounds (\$3.2 billion).

UBS had already raised its provisions for future litigation to 1.98 billion francs earlier this year and the currency market investigation is one of several legal headaches facing the bank as it reduces its investment banking business.

In France, UBS is being investigated for allegedly helping wealthy investors avoid tax, which the bank says "will now be a matter of years and not months" to set side.

Investigating magistrates had proposed that the bank pay a fine of 4.88 billion euros in the investigation, according to a judicial source.

(Additional reporting by Joshua Franklin; editing by David Clarke)

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ANEJO 3

BrokerCheck Report**UBS FINANCIAL SERVICES INCORPORATED OF PUERTO RICO**

CRD# 13042

Report #30127-18585, data current as of Thursday, October 30, 2014.

<u>Section Title</u>	<u>Page(s)</u>
Report Summary	1
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Disclosure Events	34



Other Sanction(s)/Relief Sought:

Resolution: Settled

Resolution Date: 10/09/2014

Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct? No

Sanctions Ordered: Monetary/Fine \$5,181,742.00
Disgorgement/Restitution

Other Sanctions Ordered: THE AGREEMENT CALLS FOR AN ENHANCED SUPERVISION FOR SIX UBS AGENTS WHO MAY HAVE INCURRED IN OBJECTIONABLE PRACTICES FOR A PERIOD OF SIX MONTHS, AUTOMATICALLY EXTENDABLE FOR AN ADDITIONAL SIX MONTHS, UNLESS OTHERWISE APPROVED BY THE OCFI. WITHIN SIX MONTHS FROM THE EXECUTION OF THE AGREEMENT, UBS WILL CONDUCT A GOOD FAITH, CONFIDENTIAL REVIEW OF CUSTOMER ACCOUNTS WHERE SENIOR, LOW NET WORTH INVESTORS WITH A CONSERVATIVE RISK PROFILE HAD A POTENTIALLY SIGNIFICANT LEVEL OF THEIR LIQUID NET ASSETS INVESTED IN PRCEF TO DETERMINE WHETHER ADDITIONAL ACTION AND RESTITUTION, IF ANY, IS REQUIRED. FURTHER, UBS WILL REVIEW AND UPDATE ITS POLICIES AND PROCEDURES TO ENSURE COMPLIANCE WITH APPLICABLE REGULATORY RULES, IN PARTICULAR, WITH RESPECT TO THE USE OF "NON-PURPOSE" LOANS.

Sanction Details: WITHOUT AN ADMISSION OF LIABILITY OR WRONGDOING ON THE PART OF UBS, OCFI AND UBS AGREED TO REACH A COMPLETE AND FINAL SETTLEMENT AGREEMENT ("AGREEMENT") WHEREBY 34 CLIENTS, MOSTLY SENIOR, LOW NET WORTH INVESTORS WITH CONSERVATIVE INVESTMENT PROFILES WHOSE INVESTMENTS IN PRCEF REPRESENTED A SUBSTANTIAL PORTION OF THEIR LIQUID NET ASSETS, WILL BE OFFERED BY UBS, WITHIN 45 DAYS OF THE EXECUTION OF THE AGREEMENT, AND IN COORDINATION WITH OCFI, AN AGGREGATE RESTITUTION OF \$1,681,742.00 FOR THEIR LOSSES. ADDITIONALLY, UBS WILL PAY A CONTRIBUTION IMPOSED BY THE OCFI OF \$3,500,000 THAT WILL BE DESTINED TO THE SECURITIES TRADING, INVESTOR EDUCATION, AND INVESTIGATION FUND.

Disclosure 2 of 6

Reporting Source: Regulator

ANEJO 4



COMUNICADO DE PRENSA

9 de octubre de 2014

Contacto: Lic. Rafael Blanco Latorre
(787) 723-3131 ext 2204

OCIF ANUNCIA UBS ACUERDA PAGAR \$3,500,000 Y OFRECER RESTITUIR \$1,681,742 EN CASO RELACIONADO A LA VENTA Y SUPERVISIÓN DE FONDOS MUTUOS CERRADOS

San Juan. La Oficina del Comisionado de Instituciones Financieras ("OCIF") llevó a cabo un examen de las operaciones de UBS Financial Services Incorporated of Puerto Rico ("UBS"), el cual cubrió el período entre el 1ro de enero de 2006 al 30 de septiembre de 2013. El propósito de dicho examen fue evaluar el cumplimiento con las disposiciones de la Ley Número 60 (Ley de Valores de Puerto Rico), el Reglamento Número 6078 de dicha Ley, así como cualquier otra disposición de ley bajo la jurisdicción de la OCIF en relación con la oferta, venta o compra de fondos mutuos cerrados bajo la administración de dicha casa de corretaje.

Luego de analizar la información recopilada, la OCIF advino en conocimiento, mediante entrevista a una muestra representativa de clientes de perfil de tolerancia de riesgo conservadora y con un nivel significativo de sus activos líquidos invertidos en fondos mutuos cerrados, que UBS pudo haber permitido o recomendado la otorgación de líneas de crédito o préstamos conocidos como "non-purpose loans", a algunos de estos clientes, el producto de los cuales pudo haber sido utilizado para la compra indebida de acciones en fondos mutuos cerrados. Además, la OCIF se percató de posibles irregularidades en el manejo de las cuentas y récords de estos clientes, y en la falta de una supervisión adecuada y diligente por parte de UBS a sus agentes.

En ánimo de dar por terminada cualquier controversia y poder restituir de forma expedita a 34 clientes que pudieron haber sufrido pérdidas de acuerdo a los parámetros establecidos de mayoría de edad y bajo patrimonio con inversiones concentradas en Fondos Mutuos Cerrados, UBS y la OCIF han decidido entrar en un ACUERDO mediante el cual UBS desembolsará un total de \$5,181,742.00 entre restituciones y una aportación impuesta por la OCIF al Fondo de Educación al Inversionista, adscrito a la OCIF. UBS, dentro de un término de 45 días de la firma del acuerdo y en coordinación con la OCIF, sin admitir haber incurrido en práctica ilegal alguna, ofrecerá restituir a los clientes afectados un total de \$1,681,742.00.



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OFICINA DEL COMISIONADO DE INSTITUCIONES FINANCIERAS

Además, UBS aportará a la OCIF \$3,500,000.00, dirigidos a nutrir el Fondo de Educación al Inversionista. Igualmente, el Acuerdo provee para que, durante un periodo de 6 meses, que pudiera extenderse a 6 meses adicionales, UBS supervise estrictamente a los seis agentes que pudieron haber incurrido en determinadas prácticas indebidas. Además, UBS se compromete, dentro de un periodo de 6 meses, a realizar un análisis extendido de cualesquiera otros clientes con características similares que pudieran haberse afectado y que no fueron parte de la muestra analizada por la OCIF. UBS se compromete en proveer a la OCIF el resultado de tal análisis.

Finalmente, UBS revisará y actualizará sus políticas y procedimientos para asegurar su cumplimiento con las disposiciones reglamentarias aplicables, en particular con relación a los llamados "non-purpose loans" y evitar incurrir en una situación similar a futuro.

"Ciertamente, este Acuerdo obra en beneficio de todas las partes. Por un lado, obviamos el proceso Administrativo – Judicial que acarrea costos a las arcas del gobierno y meses o años en resolver ante un foro relevante, y los clientes identificados en el examen podrán ser resarcidos de sus pérdidas de manera inmediata. De otro lado, la OCIF ha cumplido su deber ministerial de imponerle a UBS medidas de supervisión estrictas de manera que las prácticas señaladas no se repitan", dijo el licenciado Rafael Blanco Latorre, Comisionado de Instituciones Financieras.

La totalidad del ACUERDO, se aneja a este COMUNICADO. Los anejos al acuerdo se mantienen de forma Confidencial para proteger la identidad y datos de los clientes al igual que los nombres de los agentes de UBS señalados en el ACUERDO.

El Comisionado aprovechó la oportunidad para exhortar al público inversionista y al público en general a mantener la confianza en el sistema financiero de Puerto Rico. Además, aprovechó para recordar a la ciudadanía que pueden comunicarse directamente al centro de llamadas del Financial Industry Regulatory Authority (FINRA) a los teléfonos 1+(301)590-6500, 1+(212)858-4200, 1+(561)443-8000 o mediante comunicación escrita a la siguiente dirección: FINRA, 1735 K Street, Washington DC, 20006. Finalmente exhorta al público en general a comunicarse con la OCIF al número telefónico libre de cargos, 1-800-981-7711, para atender consultas.

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PRESS RELEASE

October 9, 2014

CONTACT: RAFAEL BLANCO, ESQ.
(787) 723-3131 ext. 2204

UBS AGREES TO SETTLEMENT WITH OCIF ON OFFERING AND SALE OF PUERTO RICO CLOSED-END MUTUAL FUNDS; WILL PAY \$3.5 MILLION CONTRIBUTION IMPOSED BY THE OCIF AND \$1.7 MILLION RESTITUTION ON CLIENT LOSSES

San Juan, Puerto Rico. The Office of the Commissioner of Financial Institutions for the Commonwealth of Puerto Rico ("OCIF") examined the operations of UBS Financial Services Incorporated of Puerto Rico ("UBS") which covered the period between January 1st, 2006 through and including September 30, 2013. The examination verified compliance with Act # 60 (Puerto Rico Uniform Securities Act) and Regulation 6078 of the aforementioned Act, as well as other applicable laws under the jurisdiction of OCIF with respect to the offer, sale, and/or purchase of Puerto Rico Closed-End Funds ("PRCEF") under the administration of UBS.

After analyzing the data collected, OCIF became aware, by means of interviews of a representative sample of clients with a conservative risk tolerance profile and with a significant level of their liquid net assets invested in PRCEF, that UBS may have permitted or recommended such clients the use of "non-purpose" loans for the purchase of additional PRCEF, an ineligible activity for "non-purpose" loans. Additionally, OCIF observed apparent irregularities in the management of some of these client's accounts and lack of adequate record keeping and diligent supervision by UBS of its agents.

In the best interest of all concerned, and without an admission of liability or wrongdoing on the part of UBS, OCIF and UBS agreed to reach a complete and final SETTLEMENT AGREEMENT ("Agreement") whereby 34 clients, mostly senior, low net worth investors with conservative investment profiles whose investments in PRCEF represented a substantial portion of their liquid net assets, will be offered by UBS, within 45 days of the execution of the Agreement, and in coordination with OCIF, an aggregate restitution of \$1,681,742.00 for their losses. Additionally, UBS will pay a contribution imposed by the OCIF of \$3,500,000 that will be destined to the Securities Trading, Investor Education, and Investigation Fund.

The Agreement calls for an enhanced supervision for six UBS agents who may have incurred in objectionable practices for a period of six months, automatically extendable for an additional six months, unless otherwise approved by the OCIF. Within six months from the execution of the Agreement, UBS will conduct a good faith, confidential review of customer accounts where senior, low



OFICINA DEL COMISIONADO DE INSTITUCIONES FINANCIERAS

net worth investors with a conservative risk profile had a potentially significant level of their liquid net assets invested in PRCEF to determine whether additional action and restitution, if any, is required. Further, UBS will review and update its policies and procedures to ensure compliance with applicable regulatory rules, in particular, with respect to the use of "non-purpose" loans.

"This Agreement is fair to all concerned. On one hand we avoid a costly and protracted administrative/judicial process and affected clients identified in the examination receive immediate restitution for their losses. On the other hand OCIF meets its ministerial obligation by ensuring that UBS adopts measures that will avoid recurrence of cited findings" stated Commissioner Rafael Blanco. The totality of the Agreement is included as an appendix to this Press Release. The exhibits to the Agreement will remain confidential to protect the identity and other confidential data of both clients and UBS agents.

Commissioner Blanco further underlined the importance of investors to maintain its trust in the Puerto Rico financial industry. Any interested party should communicate directly with OCIF, at the number indicated below, or with the Financial Industry Regulatory Authority (FINRA) at (301) 590-6500, (212)858-4200, (561)443-8000 or by mail to the following address:

FINRA
1735 K Street
Washington, DC 20006

Finally, OCIF remains committed to serve the community and can be reached at our toll free number 800-981-7711 for consultation.

#####

ANEJO 5

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT, made and entered on this 9th day of October 2014, to be effective as of this date between UBS FINANCIAL SERVICES INCORPORATED OF PUERTO RICO ("UBS"), and the OFFICE OF THE COMMISSIONER OF FINANCIAL INSTITUTIONS OF THE COMMONWEALTH OF PUERTO RICO (the "OCFI")

WITNESSETH

WHEREAS, UBS has been registered with the OCFI as a general securities broker/dealer since 1984 (CRD-13042, B/D No. 177).

WHEREAS, the OCFI conducted a routine Examination (as defined below) of UBS whose fieldwork initiated on October 15, 2013 and concluded on June 27, 2014. The primary period covered was from June 1st, 2010 to September 30, 2013. The Examination included a review of the activities and supervision of present and former UBS registered agents.

WHEREAS, the Examination was conducted to determine whether UBS complied with the requirements of Act No. 60 of June 18, 1963, as amended, known as the "Puerto Rico Uniform Securities Act" ("PRUSA"), Regulation No. 6078, approved thereunder, as well as any other legal provision under the OCFI's jurisdiction related to the securities activities of UBS (hereinafter referred as the "Examination"). UBS's compliance with certain requirements of the Securities and Exchange Commission and Self-Regulatory Organizations securities laws and regulations were also the subject of the OCFI's Examination inasmuch as such compliance could be construed to be required by PRUSA, Regulation No. 6078 and/or public policy concerns.

WHEREAS, the OCFI interviewed a sample of clients and examined whether certain former and current UBS agents ("Certain Brokers") may have either (i) recommended that, or (ii) permitted certain clients to, use non - purpose loans through UBS Bank USA (BUSA) to purchase securities in UBS brokerage accounts during 2011 - 2013 in violation of the customers' loan agreements and UBS policies. For certain clients, such practice also may have been potentially unsuitable based on the customers' financial objectives, risk

tolerance, and needs, and/or certain purchases may have been induced by misrepresentations or omissions of material facts.

WHEREAS, the OCFI interviewed a sample of senior, low net worth investors with conservative investment profiles whose investments in local closed end funds represented a substantial level of their liquid net assets and found that Certain Brokers may have engaged in the recommendation and trading of potentially large amounts of one or more similar closed - end funds in relation to such clients' liquid net assets given their conservative investment objectives, risk tolerance and more modest financial profile. Such practice may have also been potentially unsuitable based on the particular customer's conservative financial objectives, risk tolerance, and needs, and/or certain purchases may have been induced by misrepresentations or omissions of material facts based on the manner in which the investments were recommended to the investors by the agents.

WHEREAS, the OCFI also found that, in some instances, Certain Brokers may have made transactions in their clients' accounts without obtaining prior authorization, or exercised discretionary power in effecting certain transactions for the clients' accounts without first obtaining written authority from the customers.

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WHEREAS, the OCFI also examined UBS's supervisory and recordkeeping procedures during the period covered by the Examination and how these procedures were implemented by UBS in connection with certain activities undertaken during June 1st, 2010 to September 30, 2013. The OCFI extended the examination period and found that, in certain instances, UBS may have failed to maintain and enforce appropriate supervisory procedures in connection with certain client transactions during January 1st, 2006 to May 31st, 2010,¹ regarding the use of BUSA non - purpose loans by clients to purchase securities and/or in the trading of one or similar closed - end funds in relation to the clients' liquid net assets given their conservative investment objectives, risk tolerance and more modest financial profile. Thus, in certain instances, UBS was not able to prevent, detect and promptly correct

¹ To the extent that the OCFI expanded the examination period, the matters addressed from the earlier period are also resolved by this settlement.

(i) potentially unsuitable recommendations or (ii) potentially improper transactions in the client accounts at issue.

WHEREAS, the OCFI also found that UBS may have failed to maintain accurate books and records in connection with certain customers' information and the activities of the Certain Brokers.

WHEREAS, prior to the execution of this SETTLEMENT AGREEMENT, the OCFI has discussed its Examination with UBS. UBS and the OCFI are desirous of resolving this matter and all of the facts and circumstances surrounding the activities that were the subject of the Examination, including those that were the subject of the extended examination period.

WHEREAS, UBS and the OCFI have jointly agreed that it is best for all concerned to reach a complete and final SETTLEMENT AGREEMENT with respect to the Examination by means of the actions and measures provided for in this SETTLEMENT AGREEMENT, so as to avoid the costs and uncertainties of litigation for both parties.

WHEREAS, this SETTLEMENT AGREEMENT shall not be deemed an admission of liability, a finding of wrongdoing or an admission of any fact or allegation that may relate to or arise from the Examination or this SETTLEMENT AGREEMENT on the part of UBS, its subsidiaries, current or former directors, officers, managers, agents, attorneys, representatives, employees, servants, successors, affiliates, divisions, subdivisions, assigns and insurance carriers of the provisions of PRUSA or any regulation approved thereunder, nor under any other legal provision under the OCFI's jurisdiction.

NOW THEREFORE, to carry out this SETTLEMENT AGREEMENT, UBS and the OCFI agree to the following:

1. OCFI has jurisdiction over the matters agreed herein.
2. On this date, UBS and the OCFI consent to and hereby agree to settle all matters concerning the Examination as well as any regulatory matters related to the Examination by the OCFI and the activities of UBS, Certain Brokers, and the UBS Managing Staff related to the Examination.
3. In consideration for the settlement agreed to herein, the parties stipulate and agree as follows:

- a. Without admitting responsibility, nor that there was any wrongdoing, negligence, mismanagement, lack of proper supervision, nor losses in the accounts as a result of any management, actions, statements, representations or omissions of UBS, UBS's management and/or Certain Brokers, and within 45 days of the execution of this SETTLEMENT AGREEMENT, UBS, in coordination with the OCFI, will offer settlement payments to the customers identified in EXHIBIT A in exchange for the customers executing a mutually agreeable settlement and release agreement. Such offers will be made in the premises of the OCFI. The total amount of proposed restitution is \$1,681,556. Pursuant to subpart 3(e), UBS and the OCFI agree that EXHIBIT A of this SETTLEMENT AGREEMENT shall be kept in complete confidentiality.
- b. Pursuant to PRUSA, UBS will issue a check payable to the Secretary of the Treasury on the date of the execution of this SETTLEMENT AGREEMENT in the sum of three million five hundred thousand dollars (\$3,500,000.00) that will be contributed to the Securities Trading, Investor Education and Investigation Fund.
- c. Within six (6) months from the execution of this SETTLEMENT AGREEMENT, UBS will conduct a good faith, confidential review of customer accounts held as of July 31, 2013, where senior, low net worth investors with a conservative risk profile had a potentially significant level of their liquid net assets invested in certain UBS sole and co-managed closed end funds created under the Puerto Rico Investment Company Act, to determine whether additional action and restitution, if any, is required. The specific criteria that are to be used as a baseline for identifying clients that will be subject to the internal review are those specified in EXHIBIT B. The specific criteria set forth in Exhibit B does not represent a finding, opinion or judgment by the OCFI as to the suitability of those customers' accounts. Pursuant to subpart 3(e), UBS and the OCFI agree that

EXHIBIT B of this SETTLEMENT AGREEMENT shall be kept in complete confidentiality. Upon completion of its confidential review, UBS agrees to provide to the OCFI a courtesy copy of a summary description of any additional action taken by UBS in connection with the identified customer accounts, which shall remain confidential. UBS and the OCFI further agree that the confidential settlements set forth under paragraph 3(a) above are not binding in any manner with respect to the review to be conducted by UBS pursuant to this paragraph, including with respect to any criteria to be used in the review. For the avoidance of doubt, the provisions of this Paragraph 3(c) are not intended as a modification, and do not modify, the agreements contained in this SETTLEMENT AGREEMENT, including, without limitation, the provisions in Paragraphs 2 and 5 herein.

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- d. Based on allegations made by certain customers, OCFI has requested and UBS has agreed that UBS will place certain brokers under enhanced supervision as described in this paragraph. Nothing herein shall be construed as a determination by OCFI or an admission by UBS that these allegations are accurate. Accordingly, from the day of the execution of this SETTLEMENT AGREEMENT and for a period of six (6) months, automatically extendable for six (6) additional months, unless otherwise approved by the OCFI, UBS will place the brokers identified in EXHIBIT C under enhanced supervision as such term is commonly defined by industry standards, expressly requiring that all transactions carried out by the brokers identified in EXHIBIT C, be reviewed daily by the supervisors identified in such EXHIBIT C. During such period of enhanced supervision, all new accounts opened by brokers identified in EXHIBIT C will require that the supervisors identified in EXHIBIT C personally meet and interview with applicants/clients to review and verify the client's personal and financial profile and investment objectives. Such review will be documented in writing by the

supervisors identified in EXHIBIT C, and acknowledged by the clients. A certification of compliance with enhanced supervision will be submitted to the OCFI monthly. UBS and the OCFI agree that EXHIBIT C of this SETTLEMENT AGREEMENT will be kept in complete confidentiality.

e. UBS and the OCFI agree that EXHIBITS A, B and C shall be kept in complete confidentiality. Any disclosure of the contents of EXHIBITS A, B and C to any third party is prohibited, including but not limited to the dissemination of any press release or other public communication, except (i) as may be necessary by the Parties (as defined below) to enforce its terms; (ii) as provided by law or regulation; (iii) by order of any court; and (iv) that UBS may share a copy of EXHIBITS A, B and C with its affiliates and parent companies. Notwithstanding the foregoing, the Parties agree that this Paragraph may not be construed to prohibit or restrict the OCFI or UBS from providing information about the terms of EXHIBITS A, B and C, or the underlying facts and circumstances, upon request of any regulatory or law enforcement authority in connection with any inquiry, examination or investigation.

4. In addition to the aforementioned, UBS will continue to regularly review and update the Firm's policies and procedures to ensure compliance with applicable regulatory rules. UBS represents that it is taking additional, substantial measures to make reasonably sure that none of its agents are recommending or permitting clients to use non-purpose loans to purchase securities and that its surveillance is reasonably designed to identify any broker or client that attempts to engage in such conduct. These measures include (i) the creation of a new, monthly surveillance report that is reasonably designed to identify circumstances where a client may be attempting to send non-purpose loan funds outside of UBS and then redeposit the same funds to purchase securities and (ii) the creation of a non-purpose lending compliance training module that will reinforce the permissible uses

of non-purpose loans. The training module will be mandatory for all brokers and their supervisors to complete.

5. This SETTLEMENT AGREEMENT includes the totality of any and all matters associated with the findings related to the Examination conducted by the OCFI of UBS, its subsidiaries, current or former directors, officers, managers, agents, attorneys, representatives, employees, servants, successors, affiliates, divisions, subdivisions, assigns and insurance carriers pursuant to the provisions of the PRUSA and Regulation No. 6078.
6. The parties agree to execute any and all documents needed for the execution of this SETTLEMENT AGREEMENT.
7. Nothing herein stipulated shall be interpreted as an admission of fact or of liability or finding of wrongdoing by UBS, UBS management, UBS's brokers (including the Certain Brokers), its subsidiaries, current or former directors, officers, managers, agents, attorneys, representatives, employees, servants, successors, affiliates, divisions, subdivisions, assigns and insurance carriers.
8. This SETTLEMENT AGREEMENT does not preclude any potential client's private remedies, other than those included in EXHIBIT A of this SETTLEMENT AGREEMENT, against UBS, its subsidiaries, current or former directors, officers, managers, agents, attorneys, representatives, employees, servants, successors, affiliates, divisions, subdivisions, assigns and insurance carriers and/or others in connection to the activities described herein. Nothing in this SETTLEMENT AGREEMENT is intended to or shall be construed to have resolved any disputed fact or issue in any civil action, arbitration or other proceeding.
9. Except as explicitly provided in this SETTLEMENT AGREEMENT, nothing herein is intended to or shall be construed to have created, compromised, settled or adjudicated any claims, causes of action, or rights of any person whomsoever, other than as between the OCFI,

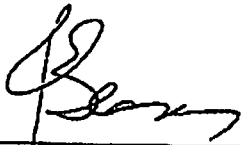
UBS, and the clients mentioned in this SETTLEMENT AGREEMENT, UBS's subsidiaries, current or former directors, officers, managers, agents, attorneys, representatives, employees, servants, successors, affiliates, divisions, subdivisions, assigns and insurance carriers in accordance with this SETTLEMENT AGREEMENT.

10. The Parties are entering into this SETTLEMENT AGREEMENT freely, knowingly and voluntarily, under the advice of counsel of their choice and with a full understanding of its terms. This SETTLEMENT AGREEMENT may not be changed or altered, except by a document signed jointly by UBS and the OCFI.
11. The Parties warrant that they are not subject to any statute or contractual obligation which may make unlawful the execution of this SETTLEMENT AGREEMENT.
12. UBS warrants that it has duly authorized the person appearing on its behalf in this SETTLEMENT AGREEMENT to execute the same.
13. This SETTLEMENT AGREEMENT reflects the total pacts and covenants between the parties hereto and any statement, promise or representation given by any of the parties hereto, which is not included herein, shall be null and void.
14. This SETTLEMENT AGREEMENT shall be interpreted for all purposes consistent with the laws of the Commonwealth of Puerto Rico. If any clause of this SETTLEMENT AGREEMENT should ever be determined to be unenforceable, it is agreed that this will not affect the enforceability of any other clause or the remainder of this SETTLEMENT AGREEMENT.
15. UBS hereby acknowledges that the failure to comply with all or any of the terms and conditions set forth in this SETTLEMENT AGREEMENT may result in the exercising of any right or prerogative possessed by the OCFI, as provided by Act No. 4 of October 11, 1985, as amended, known as

the "Commissioner of Financial Institutions Act" or any other applicable law.

16. The terms of this SETTLEMENT AGREEMENT will become effective immediately upon its execution.

This SETTLEMENT AGREEMENT is executed on October 9, 2014, by the following parties:



RAFAEL BLANCO LATORRE, ESQ.
COMMISSIONER OF FINANCIAL
INSTITUTIONS
COMMONWEALTH OF PUERTO RICO



CARLOS UBIÑAS
PRESIDENT
UBS FINANCIAL SERVICES
INCORPORATED OF PUERTO
RICO

V I C E N T E & C U E B A S
ATTORNEYS AND COUNSELORS AT LAW
CAPITAL CENTER BUILDING I - PHI
SUITE 1201
239 ARTERIAL HOSTOS
HATO REY, PUERTO RICO 00918

ANEJO 6

P.O. BOX 11609
SAN JUAN, PUERTO RICO 00910-1609

TELEPHONE
(787) 751-8000
FACSIMILE
(787) 756-6260

miércoles, 15 de octubre de 2014

ENTREGA POR MENSAJERO

**LICENCIADO RAFAEL BLANCO LATORRE
COMISIONADO DE INSTITUCIONES FINANCIERAS
OFICINA COMISIONADO DE INSTITUCIONES FINANCIERAS
Edificio Centro Europa, Oficina 600
Avenida Ponce de León 1492
San Juan, Puerto Rico 00907**

Estimado Señor Comisionado:

He leído con sumo cuidado y detenimiento el "*Settlement Agreement*" de 9 de octubre de 2014, suscrito entre la Oficina del Comisionado de Instituciones Financieras ("OCIF") y UBS Financial Services Incorporated of Puerto Rico ("UBS"), relacionado con el Examen de las Operaciones de esa firma para el período comprendido entre el 1^{ro} de julio de 2006 y el 30 de septiembre de 2013. Reconozco la labor titánica que tuvo su oficina, al enfrentarse contra un conglomerado con el poderío económico inagotable que tiene una firma como UBS. Reconozco, además, que su oficina ha logrado algo sin precedente, considerando sus limitadísimos recursos para enfrentar un litigio con empresas que tienen gran poderío económico.

Sin embargo, a nombre de los cientos de puertorriqueños que represento y que fueron víctimas de las graves faltas incurridas por UBS, las cuales, sin duda alguna usted y sus investigadores pudieron confirmar y corroborar, con mucho respeto me veo en la necesidad de comunicarle que me siento profundamente decepcionado con el resultado alcanzado.

La "*sanción*" (ni siquiera la llaman MULTA), impuesta por su oficina a UBS, no guarda proporción alguna con el grave daño que la conducta de esta firma y un grupo significativo de sus corredores de valores inescrupulosos ha infligido a nuestros conciudadanos, en su gran mayoría personas de la tercera edad, que confiaron los ahorros de toda una vida a UBS. Muchas de esas personas que tenían ahorros suficientes para disfrutar de un retiro decoroso, ahora se han convertido en cargas para sus familiares y/o para el Estado.

Usted sabe, pues así lo ha reconocido públicamente, que la conducta de UBS y sus corredores, representa el más reciente empobrecimiento del País. La pérdida en valor causada por las graves violaciones de Ley que usted identificó y que se describen claramente en el llamado "*Settlement Agreement*" que su Oficina firmó con UBS, sobrepasa los \$6,000 millones.

V I C E N T E & C U E B A S

Carta a Licenciado Rafael Blanco Latorre, COMISIONADO DE INSTITUCIONES FINANCIERAS
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El dinero en comisiones y honorarios que los fondos mutuos cerrados le generó a UBS, es de cientos de millones de dólares. Esa "sanción", lejos de ser un disuasivo, constituye un incentivo para que UBS y otras firmas de inversión que operan en Puerto Rico incurran en las mismas prácticas.

Lo que es peor, es que su oficina, que está llamada a proteger al público inversionista, ha permitido que nueve corredores que usted sabe que violaron la Ley, permanezcan en el anonimato¹. En otras palabras, sus posibles víctimas y otras que no lo han sido, siguen expuestas a caer nuevamente, pues al ocultar su identidad, nunca sabremos quiénes son. Lo anterior es inconsistente con la exhortación que usted le hace al público inversionista en su Comunicado de Prensa a "mantener la confianza en el sistema financiero de Puerto Rico".

Encubrir la identidad de los responsables y los hallazgos de su oficina en torno a su conducta, no debe ni puede ser la consigna. Esa conducta tiene que ser denunciada, incluso informada a la Financial Industry Regulatory Authority ("FINRA") y diseminada ampliamente, de manera que el público se entere de las personas y entidades a las que no se les debe confiar sus inversiones.

Por otro lado, por lo menos dos investigadores de su oficina entrevistaron a un sinnúmero de nuestros representados, quienes tienen el mismo perfil de los treinta y cuatro que se describen en el "Settlement Agreement". A pesar de que colaboraron con su oficina y con su investigación, ninguno de estos inversionistas deriva beneficio alguno de la investigación, ni sus pérdidas van a ser reembolsadas por UBS. No podemos entender cómo fue que su oficina llega a ese resultado, cuando usted y sus investigadores saben que estas personas fueron víctimas de José "Whopper" Ramírez, un corredor que no sólo fue despedido por UBS porque activamente recomendó que se tomara dinero a préstamo, para invertirlo en Fondos Mutuos cerrados, sino que también ha invocado su derecho constitucional a no incriminarse, porque sabe que violó la Ley de Valores² y hasta los propios Certificados de Incorporación de los Fondos, que claramente prohíben que se graven las acciones de los Fondos a entidades como UBS Bank USA, sin oficinas en Puerto Rico, en garantía de préstamos endosados para comprar y/o mantener ("trade or carry") una inversión en los Fondos o en otros valores o para cualquier otro propósito.

Basado en lo antes indicado, por este medio solicito que su oficina me provea copia de los Exhibits A, B y C del "Settlement Agreement", así como de todos y cada uno de los informes rendidos por sus investigadores, que resultaron en los hallazgos ("findings") que se describen con gran particularidad en el "Settlement Agreement". Sin limitar la generalidad de lo antes indicado, solicitamos nos provea copia de todo informe relacionado a:

¹ El "Settlement Agreement" hace referencia a seis corredores, pero sabemos que fueron investigados, por lo menos nueve. Se hace mención de sólo seis, porque tres fueron despedidos por UBS.

² UBS ha admitido públicamente lo siguiente, con relación a ese corredor: "...UBS' internal investigation concluded that one FA actively recommended that clients recycle non-purpose loan proceeds into closed end funds in violation of the clients' loan agreements as well as UBS policies, and UBS subsequently terminated that FA...".

V I C E N T E & C U E B A S

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(i) hallazgo que se refiere a las recomendaciones inapropiadas de los corredores a sus clientes [*"...the OCIF... found that Certain Brokers may have engaged in the recommendation and trading of potentially large amounts of one or more similar closed - end funds in relation to such clients' liquid net assets given their conservative investment objectives, risk tolerance and more modest financial profile..."*];

(ii) hallazgo que identifica que ciertos corredores ("*Certain Brokers*"), incurrieron en transacciones sin obtener la previa autorización del cliente [*"...the OCIF... found that in some instances, Certain Brokers may have made transactions in their clients' accounts without obtaining prior authorization, or exercised discretionary power in effecting certain transactions for the clients' accounts without first obtaining written authority from the customers..."*];

(iii) hallazgo que UBS omitió mantener y poner en vigor procesos adecuados de supervisión [*"...OCIF... found that in certain instances, UBS may have failed to maintain and enforce appropriate supervisory procedures in connection with certain client transactions during January 1st, 2006 to May 31st, 2010..."*]; y,

(iv) hallazgo que determinó que UBS no mantuvo récords adecuados [*"...OCIF... found that UBS may have failed to maintain accurate books and records in connection with certain customers' information and the activities of the Certain Brokers..."*].

Según usted reconocerá, el elemento característico de todo proceso democrático es el de la amplia participación ciudadana, de modo que todo ciudadano pueda tomar decisiones informadas. Ese derecho a información, también está ampliamente reconocido en lo relativo a la industria de valores. La ley y la jurisprudencia aplicable a esta industria, que es una altamente reglamentada, reconoce inequívocamente la obligación de las firmas y sus corredores de actuar con la mayor transparencia y el derecho del Inversionista a recibir la más amplia información. Ello es así, pues la industria de valores está cimentada en unos pilares que dependen de que exista la mayor confianza en los mercados.

El derecho de los ciudadanos a recibir información, se reconoció por el Tribunal Supremo de Puerto Rico en Soto v. Srio. de Justicia, 112 D.P.R. 477 (1987) y en Torres Ramos v. Policía de Puerto Rico, 143 D.P.R. 738 (1997). Además, en Ortiz Rivera v. Bauermeister, 2000 J.T.S. 157 [152 D.P.R. 161 (2000)], se reconoció que de negarse el acceso a la información, el ciudadano tiene legitimación activa para cuestionar la negativa del Estado. Ha señalado, además, el Tribunal Supremo de Puerto Rico:

V I C E N T E & C U E B A S

Carta a licenciado Rafael Blanco Latorre, COMISIONADO DE INSTITUCIONES FINANCIERAS
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"[n]o basta con que se reconozca meramente la importante justificación política de la libertad de información. *Los ciudadanos de una sociedad que se gobierna a sí misma deben poseer el derecho legal de examinar e investigar cómo se conducen sus asuntos, sujetos sólo a aquellas limitaciones que impone la más urgente necesidad pública. Debe elevarse ese derecho a una posición de la más alta santidad si ha de constituir un baluarte contra un liderato insensible*". (Énfasis suplido en el original). Soto, et al vs. Giménez Muñoz, et al, 112 DPR 477 (1982).

En vista de lo anterior, por este medio respetuosamente solicito que en un término de cinco (5) días, su oficina nos provea copia de los *Exhibits A, B y C*, identificados en el "*Settlement Agreement*", al igual que copia de todo informe relacionado a los hallazgos de su investigación identificados anteriormente del (i) al (iv), inclusive. De no recibir los documentos dentro de dicho plazo, acudiremos a los foros correspondientes a solicitar el remedio que nos confiere la Ley y la jurisprudencia citada.

Como quiera que el "*Settlement Agreement*" incluya un compromiso por parte de UBS de proveer información sobre otros clientes perjudicados por el mismo patrón de inversiones y conducta que perjudicó a 34 clientes que podían beneficiarse del "*Settlement Agreement*", le estamos enviando con carta aparte, una relación de decenas de clientes nuestros con enormes pérdidas causadas por el mismo patrón de inversiones y conducta.

Respetuosamente sometido.


Harold D. Vicente

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HDVG/pom

c: Senador Eduardo Bhatti
Senador Ramón Luis Nieves
Senador José L. Dalmau
Senador Antonio Fas Alzamora
Senador José R. Nadal Power
Senador Anibal José Torres
Senador Larry Sailhamer
Senador Thomas Rivera Schatz
Senadora María de L. Santiago
Honorable Jaime R. Rodríguez Perelló
Honorable Carlos Hernández López
Honorable Jennifer González
Honorable María de Lourdes Ramos
Joan Isabel González - Periódico El Nuevo Día
Caribbean Business
Noticel



ANEJO 7

Oficina del Comisionado de Instituciones Financieras
Ofice of the Financial Institutions Commissioner
P.O. Box 108880, San Juan, Puerto Rico 00986-0880
Tel. (787) 723-3131 Fax (787) 723-4042
e-mail: oficel@gobierno.pr www.ocif.gobierno.pr

17 de octubre de 2014

Lcdo. Harold D. Vicente
Vicente & Cuebas
Capital Center Building I - PHI
Suite 1201
239 Arterial Hostos
Hato Rey, Puerto Rico 00918

RE: SOLICITUD DE DOCUMENTOS

Estimado licenciado Vicente:

Acusamos recibo de su carta con fecha de 15 de octubre de 2014 referente al acuerdo transaccional efectuado el 9 de octubre de 2014 ("Settlement Agreement") entre la Oficina del Comisionado de Instituciones Financieras ("OCIF") y UBS Financial Services Incorporated of Puerto Rico ("UBS"). Entre otras cosas, en dicha carta solicita copia de los Exhibits confidenciales que forman parte del "Settlement Agreement" denominados Exhibits A, B y C, al igual que copia de todo informe relacionado a los hallazgos de nuestra investigación.

Entendemos que la esencia de lo sometido en la carta es una solicitud a la OCIF para la divulgación de la información especificada en su escrito. Como tal, luego de considerarla, se deniega por los fundamentos que se consignan a consideración.

Marco fáctico

Según ha trascendido públicamente, durante el periodo de 15 de octubre de 2013 al 27 de junio de 2014, la OCIF llevó a cabo un examen a las operaciones de UBS, el cual cubrió el periodo entre el 1^o de enero de 2006 al 30 de septiembre de 2013. El propósito del mismo fue verificar y determinar el cumplimiento con las diferentes disposiciones de la Ley Núm. 60 de 18 de junio de 1963, según enmendada, conocida como "Ley Uniforme de Valores", el Reglamento Número 6078 de 18 de febrero de 2000, conocido como "Reglamento de la Ley Uniforme de Valores de Puerto Rico" (en



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adelante, el "Reglamento Núm. 6078"), así como otras disposiciones de ley aplicable a las actividades de valores llevadas a cabo por UBS y que estuvieran bajo la jurisdicción de la OCIF.

Marco legal

Entendemos necesario aclarar las facultades, obligaciones y poderes que posee la OCIF. La Ley Número 4 de 11 de octubre de 1985, según enmendada, conocida como "Ley de la Oficina del Comisionado de Instituciones Financieras" (en adelante, la "Ley Núm. 4"), le impone a la OCIF la responsabilidad de reglamentar, fiscalizar y supervisar las instituciones financieras que operen o hagan negocios en Puerto Rico.

Al amparo de las disposiciones de la Ley Núm. 4, la OCIF lleva a cabo, entre otras cosas, toda clase de estudios e investigaciones sobre asuntos que afecten la industria bancaria, financiera y de valores e impone multas administrativas por las violaciones a las leyes que administra o las reglas, reglamentos y órdenes aprobados o dictados por él, entre muchas otras.

Específicamente, la Ley Núm. 4 dispone en su Artículo 20 (e) lo siguiente en cuanto a la confidencialidad de nuestros exámenes e investigaciones:

(e) Todo funcionario, oficial, empleado o examinador de la Oficina del Comisionado de Instituciones Financieras y de la Junta Financiera prestará un juramento de que no divulgará la información obtenida en sus investigaciones y toda aquella información que se derive del descargo de su gestión oficial. El funcionario, oficial, empleado o examinador que faltare a su juramento incurrirá en un delito menos grave y se le castigará con una multa no mayor de quinientos dólares (\$500) o con cárcel por término no mayor de seis (6) meses, o con ambas penas a discreción del tribunal.

En el caso de obtención de información confidencial obtenida de agencias de investigación y orden público, todo funcionario, oficial, empleado o examinador de la Oficina del Comisionado de Instituciones Financieras que por descuido u omisión, o deliberadamente, ofreciere información, diere a la publicidad o públicamente comentare sobre dicha información, sin que medie autorización por escrito del Comisionado, le será imputada la comisión de delito grave y convicto que fuere se le impondrá pena de reclusión por un término fijo de tres (3) años. De mediar circunstancias agravantes la pena podrá ser aumentada hasta un máximo de cinco (5) años; de mediar circunstancias atenuantes la pena podrá ser reducida hasta un máximo de



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dos (2) años. La persona convicta podrá ser referida a los beneficios de sentencia suspendida, según determine el tribunal. (Énfasis nuestro).

Además, el artículo 406 de la Ley Uniforme de Valores dispone como sigue, en lo que resulta aquí relevante:

... (b). Será ilegal para el Comisionado o cualesquiera de sus oficiales o empleados usar para beneficio personal cualquier información que haya sido archivada con u obtenida por el Comisionado y que no haya sido hecha pública. Ninguna disposición de [... esta Ley] autoriza al Comisionado, ni a ninguno de sus oficiales o empleados, a revelar ninguna de esa información excepto entre ellos mismos o cuando sea necesario o apropiado en un procedimiento o investigación de acuerdo con las disposiciones de [... esta Ley]. Ninguna disposición de [... esta Ley] crea o deroga ningún privilegio que exista, cuando se requiera evidencia documental o cualesquiera otra clase de evidencia por citación dirigida al Comisionado o cualesquiera de sus oficiales o empleados. [Énfasis añadido].

A tenor con lo anterior, entendemos que los documentos o cualquier tipo de información obtenida en las intervenciones de la OCIF relacionadas con investigaciones o exámenes a las entidades que supervisa, constituyen información que, por disposición de ley, es de carácter confidencial. Así pues, a pesar de que el Tribunal Supremo de Puerto Rico ha reconocido el derecho de los ciudadanos a recibir información, tal derecho no es absoluto, y no aplica en el caso que nos ocupa.

Por su parte, la Ley Uniforme de Valores de Puerto Rico también faculta al Comisionado a realizar los exámenes e investigaciones que éste estime pertinente. Específicamente, el Artículo 407(a) dispone que el Comisionado a su discreción "[p]odrá hacer aquellas investigaciones públicas o privadas, dentro o fuera de Puerto Rico, que él crea necesarias para determinar si alguna persona ha violado o está próxima a violar cualquiera disposición de {... esta Ley} , o cualquier reglamento u orden promulgada de acuerdo con la mismo, o para ayudar a poner en vigor [... esta ley], o en la promulgación de reglamentos y formularios de acuerdo con las disposiciones de la misma".

Asimismo, el Reglamento Núm. 6078, adoptado por el Comisionado para implementar las disposiciones de la Ley Núm. 60, dispone en su Sección 8.3 lo siguiente:



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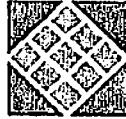
El producto de las investigaciones y exámenes de los corredores – traficantes, asesores de inversiones, agentes, representantes de asesores de inversiones, agentes de emisores, asesores bajo cubierta federal y representantes de asesores bajo cubierta federal, llevados a cabo por los examinadores del Comisionado o por sus agentes autorizados, sean éstos públicos o privados, y el producto de cualquier otra investigación autorizada por la Ley Número 4 de 11 de octubre de 1985, según enmendada, incluyendo los informes de los examinadores y otros documentos obtenidos durante dichas investigaciones y exámenes, será de naturaleza confidencial..

Además, en la medida en que su solicitud requiere la divulgación de información financiera de individuos, nos vemos obligados a denegar su solicitud ya que la misma resulta confidencial a la luz de la normativa aplicable. ¹

Según se desprende de lo anterior, el Comisionado tiene la facultad de interponer cualesquiera remedios, acciones o procedimientos legales que fueran necesarios o convenientes para hacer efectivos los propósitos de las leyes que administra. Dicho esto, la OCIF y UBS firmaron un Acuerdo el cual establece en su inciso 3(e) lo siguiente en cuanto a la confidencialidad de los Exhibits solicitados:

UBS and the OCFI agree that EXHIBITS A, B and C shall be kept in complete confidentiality. Any disclosure of the contents of EXHIBITS A, B and C to any third party is prohibited, including but not limited to the dissemination of any press release or other public communication, except (i) as may be necessary by the Parties (as defined below) to enforce its terms; (ii) as provided by law or regulation; (iii) by order of any court; and (iv) that UBS may share a copy of EXHIBITS A, B and C with its affiliates and parent companies. Notwithstanding the foregoing, the Parties agree that this Paragraph may not be construed to prohibit or restrict the OCFI or UBS from providing information about the terms of EXHIBITS A, B and C, or the underlying facts and circumstances, upon request of any regulatory or law enforcement authority in connection with any inquiry, examination or investigation.

¹ Véase, entre otros, Santiago v. Bobb & El Mundo Inc. 117 D.P.R. 153 (1986). En este caso, el Tribunal Supremo de Puerto Rico determinó que entre otros tipos de información en posesión del gobierno, se considerará confidencial aquella información cuya revelación puede lesionar los derechos fundamentales de terceros.



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Determinación administrativa

Por todo lo anterior, la OCIF se ve impedida de diseminar el contenido de los Exhibits A, B y C, excepto cuando se solicite según dispone la cláusula antes citada.

Cordialmente,

c Senador Eduardo Bhattia
 Senador Ramon Luis Nieves
 Senador José L. Dalmau
 Senador Antonio Faz Alzamora
 Senador José R. Nadal Power
 Senador Anibal José Torres
 Senador Larry Sallha mer
 Senador Thomas Rivera Schatz
 Senadora Maria de L. Santiago
 Honorable Jaime R. Rodriguez Perello
 Honorable Carlos Hernández Lopez
 Honorable Jennifer González
 Honorable Maria de Lourdes Ramos
 Sa. Joan Isabel González, El Nuevo Día
 Caribbean Business
 Notice!

Note 14 Provisions and contingent liabilities (continued)

portfolio manager under the STCDO/CDS. UBS and the intermediating banks terminated the STCDO/CDS following non-payment by KWL under the STCDOs. UBS claims payment of approximately USD 319.8 million, plus interest, from KWL, Depfa and LBBW, which remains unpaid.

In 2010, UBS (UBS AG, UBS Limited and UBS Global AM) issued proceedings in London against KWL, Depfa and LBBW seeking declarations and/or to enforce the terms of the STCDO/CDS contracts. Each of KWL, Depfa and LBBW filed counterclaims which UBS has been defending. KWL amended its pleading in June 2014 and LBBW and Depfa also amended their pleadings to allege fraudulent misrepresentation. UBS has denied these claims. Trial began in April 2014 and concluded in July 2014. A decision is expected in the fourth quarter of 2014.

In separate proceedings brought by KWL against LBBW in Leipzig, Germany, the court ruled in LBBW's favor in June 2013 and upheld the validity of the STCDO as between LBBW and KWL. KWL has appealed against that ruling and, in May 2014, the appeal court ruled that further evidence be taken on two issues, which is likely to take several months.

In 2011, the former managing director of KWL and two financial advisers were convicted in Leipzig, Germany, on criminal charges related to certain KWL transactions, including swap transactions with UBS and other banks. Following further criminal proceedings brought against them in Dresden, Germany, relating to the same transactions, they were each convicted of embezzlement in 2013 and given longer sentences. All three have lodged appeals.

Since 2011, the SEC has been conducting an investigation focused on, among other things, the suitability of the KWL transaction, and information provided by UBS to KWL. UBS has provided documents and testimony to the SEC and is continuing to cooperate with the SEC.

Our balance sheet at 30 September 2014 reflected provisions with respect to matters described in this item 6 in an amount that UBS believes to be appropriate under the applicable accounting standard. As in the case of other matters for which we have established provisions, the future outflow of resources in respect of such matters cannot be determined with certainty based on currently available information, and accordingly may ultimately prove to be substantially greater (or may be less) than the provision that we have recognized.

7. Puerto Rico
Declines in the market prices of Puerto Rico municipal

shareholder derivative action also was filed in February 2014 against various UBS entities and current and certain former directors of the funds, alleging hundreds of millions in losses in the funds. In May 2014, a federal class action complaint was filed against various UBS entities, certain members of UBS Puerto Rico senior management, and the co-manager of certain of the funds seeking damages for investor losses in the funds during the period from May 2008 through May 2014.

An internal review also disclosed that certain clients, many of whom acted at the recommendation of one financial advisor, invested proceeds of non-purpose loans in closed-end fund securities in contravention of their loan agreements.

In October 2014 UBS reached a settlement with the Office of the Commissioner of Financial Institutions for the Commonwealth of Puerto Rico (OCFI) in connection with OCFI's examination of UBS's operations from January 2006 through September 2013. Pursuant to the settlement UBS will contribute USD 3.5 million to an investor education fund and will offer USD 1.68 million in restitution to certain investors.

In 2011, a purported derivative action was filed on behalf of the Employee Retirement System of the Commonwealth of Puerto Rico (System) against over 40 defendants, including UBS Financial Services Inc. of Puerto Rico (UBS PR) and other consultants and underwriters, trustees of the System, and the President and Board of the Government Development Bank of Puerto Rico. The plaintiffs alleged that defendants violated their purported fiduciary duties and contractual obligations in connection with the issuance and underwriting of approximately USD 3 billion of bonds by the System in 2008 and sought damages of over USD 800 million. UBS is named in connection with its underwriting and consulting services. In 2013, the case was dismissed by the Puerto Rico Court of First Instance on the grounds that plaintiffs did not have standing to bring the claim. That dismissal was subsequently overturned by the Puerto Rico Court of Appeals. UBS's petitions for appeal and reconsideration have been denied by the Supreme Court of Puerto Rico.

Also, in 2013, an SEC Administrative Law Judge dismissed a case brought by the SEC against two UBS executives, finding no violations. The charges had stemmed from the SEC's investigation of UBS's sale of closed-end funds in 2008 and 2009, which UBS settled in 2012. Beginning in 2012 two federal class action complaints, which were subsequently consolidated, were filed against various UBS entities, certain of the funds, and certain members of UBS Puerto Rico senior management, seeking damages for investor losses in

bonds and of UBS Puerto Rico sole-managed and co-managed closed-end funds (the funds) since August 2013 have led to multiple regulatory inquiries, as well as customer complaints and arbitrations with aggregate claimed damages exceeding USD 900 million. The claims are filed by clients in Puerto Rico who own the funds or Puerto Rico municipal bonds and/or who used their UBS account assets as collateral for UBS non-purpose loans and whose allegations include fraud, misrepresentation and unsuitability of the funds and of the loans. A

the funds during the period from January 2008 through May 2012 based on allegations similar to those in the SEC action. Plaintiffs in that action and the federal class action filed in May 2014 described above are now seeking to have those two actions consolidated.

Our balance sheet at 30 September 2014 reflected provisions with respect to matters described in this item 7 in amounts that UBS believes to be appropriate under the applicable accounting standard. As in the case of other matters for which we have established