

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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C.D.T.S. NO. 1 AND A.T.U. LOCAL 1321	:	X	Civil Action No.
PENSION PLAN, Individually and on Behalf	:		
of All Others Similarly Situated,	:		<u>CLASS ACTION</u>
	:		
Plaintiff,	:		COMPLAINT FOR VIOLATION OF THE
	:		FEDERAL SECURITIES LAWS
vs.	:		
	:		
UBS AG, OSWALD J. GRÜBEL and JOHN	:		
CRYAN,	:		
	:		
Defendants.	:		
	:		
	:		<u>DEMAND FOR JURY TRIAL</u>

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## **INTRODUCTION AND OVERVIEW**

1. This is a class action for violations of the anti-fraud provisions of the federal securities laws on behalf of all purchasers on any U.S. exchange, or where title passed within the United States, of the publicly traded securities of UBS AG (“UBS” or the “Company”) between March 15, 2011 and September 15, 2011 (the “Class Period”), who were damaged thereby (the “Class”).

2. UBS is a global financial services company. During the Class Period, defendants told investors that the Company’s disclosure controls and procedures, as well as its internal controls over financial reporting, were effective. They were not. This became apparent on September 15, 2011, when UBS disclosed that a supposed rogue trader, Kweku Adoboli (“Adoboli”), had engaged in unauthorized trades on behalf of UBS that resulted in losses of \$2.3 billion.

3. As a result of this disclosure, the price of UBS stock dropped over 10% in a single day.

4. Subsequently, defendants have admitted that their statements were false, conceding that “our previous evaluation stating that our disclosure controls and procedures were effective on 31 December 2010 . . . should no longer be relied upon.”

5. Defendants either knew or recklessly disregarded that their statements were false. The rogue trader that caused the losses had been conducting unauthorized trades for almost three years, beginning in October of 2008. Further, in November 2009, UBS paid an £8 million fine to the British Financial Services Authority (“FSA”) because another rogue trader at UBS had made unauthorized investments of client funds. In response to this scandal, UBS initiated a “root-and-branch” review of its compliance procedures. Given their knowledge of prior rogue trading, defendants either knew or recklessly disregarded that UBS’s controls were insufficient to prevent

unauthorized transactions. Indeed, defendant Oswald J. Grübel resigned as Chief Executive Officer of UBS in order to “assume responsibility for the recent unauthorized trading incident.”

6. On January 30, 2012, *The Wall Street Journal* reported that British and Swiss regulators were likely to begin enforcement proceedings against UBS for the gaps in oversight that had allowed Adoboli to make the trades at issue.

7. On that same day, Adoboli pleaded not guilty to criminal charges in London. His trial is scheduled to begin on September 3, 2012.

### **JURISDICTION AND VENUE**

8. The claims asserted arise under §§10(b) and 20(a) of the Securities Exchange Act of 1934 (“1934 Act”) and Rule 10b-5. Jurisdiction is conferred by §27 of the 1934 Act. Venue is proper pursuant to §27 of the 1934 Act. UBS conducts business in this District and its stock trades on the New York Stock Exchange (“NYSE”) in this District.

### **THE PARTIES**

9. Plaintiff C.D.T.S. No. 1 and A.T.U. Local 1321 Pension Plan purchased UBS securities during the Class Period as set forth in the attached certification and was damaged thereby.

10. Defendant UBS is global financial services company with its headquarters located in Zurich, Switzerland. UBS’s shares are listed on the SIX Swiss Exchange and UBS’s common stock is traded under the symbol UBS on the NYSE, which is an efficient market.

11. Defendant Oswald J. Grübel (“Grübel”) was, at all relevant times, Chief Executive Officer (“CEO”) of the Company.

12. Defendant John Cryan (“Cryan”) was, at relevant times, Chief Financial Officer (“CFO”) of the Company.

## **SCIENTER**

13. During the Class Period, defendants had both the motive and opportunity to conduct fraud. They also had actual knowledge of the misleading nature of the statements they made or acted in reckless disregard of the true information known to them at the time. In so doing, the defendants participated in a scheme to defraud and committed acts, practices and participated in a course of business that operated as a fraud or deceit on purchasers of UBS securities during the Class Period.

## **PRE-CLASS PERIOD EVENTS**

14. On November 5, 2009, the FSA issued a press release that stated in relevant part:

The Financial Services Authority (FSA) today fined UBS AG (UBS) £8million for systems and controls failures that enabled employees to carry out unauthorised transactions involving customer money on at least 39 accounts.

The unauthorised activity, which took place between January 2006 and December 2007 at UBS' London-based wealth management business, only came to light when a whistleblower raised concerns internally.

Upon further investigation, it was discovered that UBS employees had taken part in the trading of foreign exchange and precious metals using customer money without authorisation and allocated losses to customers' accounts. An internal UBS investigation estimated that as many as 50 unauthorised transactions a day were taking place at the operation's peak.

The FSA investigation found that UBS had failed to:

- manage and control the key risks, and the level of risk, created by its international wealth management business model;
- implement effective remedial measures in response to several warning signs that suggested the business' systems and controls were inadequate; and
- provide an appropriate level of supervision over customer-facing employees.

Margaret Cole, FSA director of enforcement and financial crime, said:

“The penalty, one of the largest fines we have levied, reflects our tougher enforcement stance and our policy of imposing steep penalties to achieve credible deterrence.

“These employees were able to take advantage of UBS’ inadequate systems and controls, giving them free rein to make unauthorised trades with customer money that they were then able to conceal.

“It is imperative, particularly in these more challenging financial conditions, that firms have suitable systems and controls in place to keep their houses in order. Where firms fall short in this regard, the consequences will be severe.”

The £8m fine is the third largest the FSA has ever imposed. UBS agreed to settle at an early stage of the FSA’s investigation meaning it qualified for a 20% discount. Without the discount, the FSA would have imposed a financial penalty of £10million.

UBS has since paid compensation in excess of US\$42million by way of redress for its customers’ losses.

#### **FALSE AND MISLEADING STATEMENTS DURING THE CLASS PERIOD**

15. On March 15, 2011, UBS filed a Form 20-F Annual Report with the SEC for the year 2010. That report stated in relevant part:

An evaluation was carried out under the supervision of management including the Group CEO and Group CFO, of the effectiveness of our disclosure controls and procedures (as defined in Rule 13a–15e) under the US Securities Exchange Act of 1934. Based upon that evaluation, the Group CEO and Group CFO concluded that *our disclosure controls and procedures were effective as of 31 December 2010*. No significant changes have been made in our internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation.

16. The 20-F went on to state:

#### **Management’s report on internal control over financial reporting**

The Board of Directors and management of UBS AG (UBS) are responsible for establishing and maintaining adequate internal control over financial reporting. UBS’s internal control over financial reporting is designed to provide reasonable assurance regarding the preparation and fair presentation of published financial statements in accordance with International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board.

UBS's internal control over financial reporting includes those policies and procedures that:

- Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect transactions and dispositions of assets;
- Provide reasonable assurance that transactions are recorded as necessary to permit preparation and fair presentation of financial statements, and that receipts and expenditures of the company are being made only in accordance with authorizations of UBS management; and
- Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

UBS management assessed the effectiveness of UBS's internal control over financial reporting as of 31 December 2010 based on the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control-Integrated Framework. Based on this assessment, management believes that, *as of 31 December 2010, UBS's internal control over financial reporting was effective.*

17. UBS's Form 20-F contained a certification signed by defendant Grübel that stated as follows:

I, Oswald Grübel, certify that:

1. I have reviewed this annual report on Form 20-F of UBS AG;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;

4. The company's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others in those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and
5. The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.
18. The Form 20-F also contained an identical certification signed by defendant Cryan.

## **DEFENDANTS' STATEMENTS WERE FALSE AND MISLEADING**

19. Defendants' statements set forth above were materially false and misleading because UBS's disclosure controls, procedures and internal controls over financial reporting were not effective as defendants claimed. Specifically, the control requiring bilateral confirmation with counterparties of trades within the UBS Investment Bank's equities business with settlement dates of greater than 15 days after trade date was not operating, and when such trades were cancelled, re-booked or amended, the related monitoring control to ensure the validity of these changes had ceased to operate effectively. Also, the controls in the inter-desk reconciliation process within the Investment Bank's equities and fixed income, currencies and commodities businesses did not operate effectively.

## **THE TRUTH BEGINS TO COME TO LIGHT**

20. On September 15, 2011, UBS issued a press release that stated in relevant part:

UBS has discovered a loss due to unauthorized trading by a trader in its Investment Bank. The matter is still being investigated, but UBS's current estimate of the loss on the trades is in the range of USD 2 billion. It is possible that this could lead UBS to report a loss for the third quarter of 2011.

21. As a result of this disclosure, the price of UBS's stock dropped from a closing price of \$12.68 per share the previous day to \$11.41 per share on extraordinary volume of over 29 million shares. This decrease in the price of UBS stock was the result of the disclosure of previously concealed information being revealed.

22. On September 18, 2011, UBS issued a press release that stated in relevant part:

On September 15, 2011 UBS announced that it had discovered unauthorized trading in its Investment Bank. This trading was conducted by a trader in its Global Synthetic Equity business in London. The trader in question has been charged by UK authorities with fraud by abuse of position.

Before making a further announcement, we needed to be certain that we understood the positions that were booked and that we knew the amount of our resulting loss.



We have now covered the risk resulting from the unauthorized trading, and the equities business is again operating normally within its previously defined risk limits. The loss arising from this matter is USD 2.3 billion. As previously stated, no client positions were affected.

The loss resulted from unauthorized speculative trading in various S&P 500, DAX, and EuroStoxx index futures over the last three months. The positions taken were within the normal business flow of a large global equity trading house as part of a properly hedged portfolio. However, the true magnitude of the risk exposure was distorted because the positions had been offset in our systems with fictitious, forward-settling, cash ETF positions, allegedly executed by the trader. These fictitious trades concealed the fact that the index futures trades violated UBS's risk limits.

Following inquiries directed to him by UBS control functions that were reviewing his positions, the trader revealed his unauthorized activity on September 14, 2011.

UBS's Board of Directors has set up a special committee to conduct an independent investigation of the unauthorized trading activities and their relation to the control environment. The committee will be chaired by David Sidwell, the Senior Independent Director, and will report to the Board of Directors. The other members of the committee are Ann Godbehere and Joseph Yam.

23. On September 24, 2011, UBS issued a press release that stated in relevant part: "The UBS Board of Directors has accepted today the decision of Group CEO Oswald J. Grübel to resign from the bank. . . . UBS's Chairman Kaspar Villiger said: 'The Board regrets Oswald Grübel's decision. Oswald Grübel feels that it is his duty to assume responsibility for the recent unauthorized trading incident.'"

24. On October 25, 2011, UBS filed a Form 6-K with the SEC which stated in relevant part:

Following the discovery in September 2011 of unauthorized and fictitious trading by an employee in our Global Synthetic Equity business unit in London, and on the basis of information now available to management concerning the circumstances surrounding the trading and the related controls, we have determined that certain controls designed to prevent or detect the use of unauthorized and fictitious transactions on a timely basis were not operating effectively. We have further determined that the control deficiencies that led to the failure to prevent or detect unauthorized and fictitious trading on a timely basis also existed at the end of 2010.

A material weakness is a deficiency or combination of deficiencies in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of a registrant's financial statements will not be prevented or detected on a timely basis. Management has re-assessed whether our internal control over financial reporting was effective on 31 December 2010, and has determined that there is a reasonable possibility that the control deficiencies that existed on that date could have been sufficient to result in a material misstatement of our consolidated financial statements as of and for the year ended 31 December 2010.

On this basis, ***management, including our Group CEO and Group CFO, has concluded that there was a material weakness in our internal control over financial reporting on 31 December 2010 and, accordingly, that our internal control over financial reporting was not effective as of that date.*** On the basis of the available information to date, management has concluded that (i) the control requiring bilateral confirmation with counterparties of trades within our Investment Bank's equities business with settlement dates of greater than 15 days after trade date was not operating, and when such trades were cancelled, re-booked or amended, the related monitoring control to ensure the validity of these changes had ceased to operate effectively, and (ii) the controls in the inter-desk reconciliation process within the Investment Bank's equities and fixed income, currencies and commodities businesses to ensure that internal transactions are valid and accurately recorded in our books and records, including controls over cancellations and amendments of internal trades that require supervisor review, intervention and resolution, did not operate effectively.

***Management has likewise determined that, solely because of these deficiencies, our disclosure controls and procedures (as defined in Rule 13a-15(e) under the U.S. Securities Exchange Act of 1934) were not effective on 31 December 2010.***

Accordingly, our previous evaluation stating that our disclosure controls and procedures were effective on 31 December 2010 and the reports of management and of our independent registered public accounting firm on internal control over financial reporting on 31 December 2010, all of which were included in our 2010 Annual Report on Form 20-F filed with the SEC on 15 March 2011, ***should no longer be relied upon.***

Notwithstanding the foregoing, we have determined that our consolidated financial statements included in our 2010 Annual Report on Form 20-F continue to fairly present, in all material respects, our financial position on 31 December 2008, 2009 and 2010 and our results of operations and cash flows for the years ended 31 December 2008, 2009 and 2010 in accordance with IFRS.

Subsequent to the identification of the unauthorized and fictitious trading activity, we have been remediating and will continue to remediate the control deficiencies referred to above. We have reactivated the confirmation control referred to in (i) above, have initiated work on a front-to-back control process to ensure that

the exceptions identified by the inter-desk reconciliation process referred to in (ii) above are effectively reviewed, investigated and resolved on a timely basis, and will develop new monitoring reports and controls to achieve operating effectiveness in performing the controls referred to in (i) and (ii) above as part of a broader program to strengthen the effectiveness of supervisory oversight.

Investigations are ongoing and we expect we will be adopting further controls and procedures following completion of such investigations and discussions with our regulators. In the course of these ongoing investigations, management may become aware of facts relating to the Investment Bank that cause it to broaden the scope of the findings described above. In addition, management recognizes that the aforementioned material weakness in internal control over financial reporting will only be confirmed as having been remediated on 31 December 2011 if the necessary internal controls have been designed effectively, placed into operation, operated for a reasonable period of time, and tested, allowing management to conclude that the controls are operating effectively.

25. On October 25, 2011, UBS also issued a press release that stated in relevant part:

Following the discovery of the unauthorized trading activities that UBS announced in September, management has determined that certain internal controls were not effective on December 31, 2010, but at the same time has reconfirmed the reliability of the financial statements included in UBS's 2010 annual report. The financial effect of the unauthorized trading activity is fully reflected in UBS's third quarter 2011 financial report.

As a US-listed company, UBS is required under the Sarbanes-Oxley Act to evaluate the effectiveness of its "internal control over financial reporting" and "disclosure controls and procedures" on an annual basis. Following the discovery of the unauthorized trading activities, management has determined that these controls were not effective on December 31, 2010. In a document submitted to the US Securities and Exchange Commission (SEC), we have identified two control deficiencies: (i) the control requiring bilateral confirmation with counterparties of trades within our Investment Bank's equities business with settlement dates of greater than 15 days after trade date was not operating, and, when such trades were cancelled, re-booked or amended, the related monitoring control to ensure the validity of these changes had ceased to operate effectively, and (ii) the controls in the inter-desk reconciliation process within the Investment Bank's equities and fixed income, currencies and commodities businesses to ensure that internal transactions are valid and accurately recorded in our books and records, including controls over cancellations and amendments of internal trades that require supervisor review, intervention and resolution, did not operate effectively. We have taken and are taking measures to address these control deficiencies.

Investigations are ongoing, and management may become aware of facts relating to the Investment Bank that cause it to broaden the scope of the findings described above and to take additional remedial measures

26. On November 16, 2011, *The Financial Times* published an article entitled “Fresh UBS rogue trading revelations,” which stated in relevant part:

***UBS suffered unauthorised trading on the Africa desk of its UK wealth management division in 2007 and initiated a root-and-branch review of its compliance procedures,*** a UK tribunal has heard.

The revelation of a fresh rogue trading incident comes as Sergio Ermotti, the new chief executive of UBS, is set to tell investors in New York on Thursday how he will overhaul the troubled bank following a \$2.3bn trading scandal this year.

Kweku Adoboli, a former UBS employee charged with fraud and false accounting, is due in the coming days to enter a plea in the case that caused the \$2.3bn trading loss for the bank. The discovery of the substantial trading loss led to the departure of ex-chief executive Oswald Grübel.

Mr Ermotti is expected to set out a drastic cut to the investment bank with a shift away from the fixed-income business. Analysts at JPMorgan suggested on Wednesday that it would be “in both shareholders’ and [the] Swiss government’s interest” for UBS and Credit Suisse to combine their investment banks.

Disclosure of the Africa desk incident came on Wednesday at a tribunal where John Pottage, UBS’s former UK head of wealth management, is challenging a £100,000 fine from the UK’s Financial Services Authority, which has said that he should have spotted “serious flaws” in risk management sooner. Mr Pottage argues that he took all reasonable steps to eradicate “sloppy” compliance.

“UBS has already acknowledged that there were weaknesses in certain aspects of WM UK’s control environment,” the company said in a statement to the tribunal. “These have already been the subject of a Final Notice issued by the FSA to the Bank in November 2009.

“WM UK has already paid a significant financial penalty to the FSA in respect of those control weaknesses. UBS had identified the weaknesses before the regulatory action was taken, and had remediated them by June 2009, as was confirmed by an independent accountancy firm.”

Both sides agree that a string of incidents occurred within UK wealth management, including a payment fraud, client-money reconciliation problems and misuse of client money.

27. On January 30, 2012, *The Wall Street Journal* published an article entitled “Action Likely Against UBS,” which stated in relevant part:

British and Swiss regulators are likely to begin enforcement proceedings against Swiss bank UBS AG for shortcomings that allowed a London trader to make unauthorized trades last year, according to people familiar with the situation.

In September, UBS, Switzerland's largest bank by assets, disclosed that an employee on its London-based equity desk allegedly made unauthorized trades that caused \$2.3 billion in losses. Police arrested Kweku Adoboli in connection with the case.

The scandal led to the resignation of Chief Executive Oswald Grübel shortly thereafter.

While the bank has completed its own internal investigation, a joint probe by the U.K.'s Financial Services Authority and the Swiss Financial Market Supervisory Authority, or Finma, continues. Until now, that had been seen largely as a fact-finding mission to determine what went wrong.

Now, however, the proceeding is expected to result in regulators penalizing the bank for gaps in oversight that allegedly allowed Mr. Adoboli to make the trades without authorization, according to people familiar with the situation.

The regulators' investigation is expected to be completed by mid-February, although it could take far longer for them to move forward with enforcement action.

While the FSA has the power to fine a bank in the case of lapses in its risk-control systems, Finma doesn't. Instead, the Swiss agency can force a bank to make personnel changes, among other measures.

London police charged Mr. Adoboli with fraud and false accounting. The former trader has yet to enter a plea, although he is expected to do so at a hearing in London on Monday. The bank hasn't disclosed the full results of its own investigation because it doesn't want to compromise the London police investigation.

However, in October, it disclosed some of its findings in a regulatory filing. It said that the trader was able to make the trades because bank managers failed to confirm them with counterparties outside the bank, a violation of UBS's internal rules. It also found gaps in oversight over traders' ability to book and then cancel transactions. The bank has said that it has taken measures to address both deficiencies.

Mr. Adoboli's hearing Monday could be an important indicator of how the case unfolds for UBS. A not-guilty plea could set the stage for a prolonged trial that could prove embarrassing to the Swiss bank, while a guilty plea could help put a relatively quick end to the publicity surrounding the case. A lawyer for Mr. Adoboli didn't respond to a request for comment.

In the wake of the scandal, a number of UBS employees, including the heads of its equities business, resigned. The bank also ousted its chief risk officer and has

disciplined other, unnamed managers in risk-control, operations and finance functions. A person familiar with the situation said that further disciplinary action is unlikely until the conclusion of the London police probe.

28. That same day, *Reuters* reported as follows:

Former UBS trader Kweku Adoboli will stand trial in September after pleading not guilty on Monday to charges related to the loss of more than \$2 billion on trades the Swiss bank says were unauthorized.

The trial, which is likely to shine a searching light on the adequacy of the bank's management and risk controls, could land Adoboli with a maximum 10-year jail sentence if convicted of the two counts of fraud and two of false accounting.

His lawyer Paul Garlick said Adoboli, who worked for the bank as a director of exchange traded funds in London, where the trial is being held, would try to win bail before it starts on September 3, nearly a year after his arrest.

The losses led to the resignation of UBS's former chief executive Oswald Gruebel and a shake-up of its investment arm to cut its exposure to risk.

Judge Alistair McCreath said the case was "of such magnitude" that there would have to be a long gap between the plea hearing and the start of the trial.

"An earlier trial would simply not be possible," he said.

Dressed in a grey suit and blue tie, Adoboli sat in the glass and wood-paneled dock at Southwark Crown Court, taking notes on a piece of paper. He thanked the judge before being led from the dock and back into custody at the end of the hearing.

Adoboli, the British-educated son of a retired United Nations official from Ghana, was arrested on September 15 and charged a day later.

"This puts the focus back on UBS, which is negative," said one banking analyst, who asked not to be named. "They did not provide a lot of detail about what happened, but a trial does mean more details on their risk systems and on their internal investigation will have to come out."

### **LOSS CAUSATION/ECONOMIC LOSS**

29. During the Class Period, as detailed herein, defendants made false and misleading statements and engaged in a scheme to deceive the market. This artificially inflated the price of UBS's securities and operated as a fraud or deceit on the Class. Later, when defendants' prior misrepresentations and fraudulent conduct became apparent to the market, the prices of UBS's

securities fell precipitously, as the prior artificial inflation came out of the prices over time. As a result of their purchases of UBS securities during the Class Period, plaintiff and other members of the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

### **NO SAFE HARBOR**

30. UBS's verbal "Safe Harbor" warnings accompanying its oral forward-looking statements ("FLS") issued during the Class Period were ineffective to shield those statements from liability.

31. The defendants are also liable for any false or misleading FLS pleaded because, at the time each FLS was made, the speaker knew the FLS was false or misleading and the FLS was authorized and/or approved by an executive officer of UBS who knew that the FLS was false. None of the historic or present tense statements made by defendants were assumptions underlying or relating to any plan, projection or statement of future economic performance, as they were not stated to be such assumptions underlying or relating to any projection or statement of future economic performance when made, nor were any of the projections or forecasts made by defendants expressly related to or stated to be dependent on those historic or present tense statements when made.

### **APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD ON THE MARKET**

32. Plaintiff will rely upon the presumption of reliance established by the fraud-on-the-market doctrine in that, among other things:

- (a) Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- (b) The omissions and misrepresentations were material;
- (c) The Company's securities traded in an efficient market;

(d) The misrepresentations alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and

(e) Plaintiff and other members of the Class purchased UBS securities between the time defendants misrepresented or failed to disclose material facts and the time the true facts were disclosed, without knowledge of the misrepresented or omitted facts.

33. At all relevant times, the market for UBS securities was efficient for the following reasons, among others:

(a) As a regulated issuer, UBS filed periodic public reports with the SEC; and

(b) UBS regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the major news wire services and through other wide-ranging public disclosures, such as communications with the financial press, securities analysts and other similar reporting services.

### **CLASS ACTION ALLEGATIONS**

34. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased the publicly traded securities of UBS during the Class Period on any U.S. exchange, or where title passed within the United States (the "Class"). Excluded from the Class are defendants, directors and officers of UBS and their families and affiliates.

35. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. Several million shares of UBS trade on the NYSE, owned by thousands of persons.



36. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- (a) Whether the 1934 Act was violated by defendants;
- (b) Whether defendants omitted and/or misrepresented material facts;
- (c) Whether defendants' statements omitted material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
- (d) Whether defendants knew or recklessly disregarded that their statements were false and misleading;
- (e) Whether the prices of UBS securities were artificially inflated; and
- (f) The extent of damage sustained by Class members and the appropriate measure of damages.

37. Plaintiff's claims are typical of those of the Class because plaintiff and the Class sustained damages from defendants' wrongful conduct.

38. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

39. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

## COUNT I

### **For Violation of §10(b) of the 1934 Act and Rule 10b-5 Against All Defendants**

40. Plaintiff incorporates ¶¶1-39 by reference.

41. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or recklessly disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

42. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

(a) Employed devices, schemes, and artifices to defraud;

(b) Made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) Engaged in acts, practices, and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of UBS securities during the Class Period.

43. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for UBS securities. Plaintiff and the Class would not have purchased UBS securities at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

44. As a direct and proximate result of these defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their purchases of UBS securities during the Class Period.

## **COUNT II**

### **For Violation of §20(a) of the 1934 Act Against All Defendants**

45. Plaintiff incorporates ¶¶1-44 by reference.

46. Defendants Grübel and Cryan acted as controlling persons of UBS within the meaning of §20 of the 1934 Act. By virtue of their positions and their power to control public statements about UBS, defendants Grübel and Cryan had the power and ability to control the actions of UBS and its employees. UBS controlled defendants Grübel and Cryan and its other officers and employees. By reason of such conduct, defendants are liable pursuant to §20(a) of the 1934 Act.

### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays for judgment as follows:

- A. Declaring this action to be a proper class action pursuant to Fed. R. Civ. P. 23;
- B. Awarding plaintiff and the members of the Class damages and interest;
- C. Awarding plaintiff's reasonable costs, including attorneys' fees; and
- D. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

### **JURY DEMAND**

Plaintiff demands a trial by jury.

DATED: June 22, 2012

ROBBINS GELLER RUDMAN  
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