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STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
NEW JERSEY BUREAU OF SECURITIES
DEPARTMENT OF LAW & PUBLIC SAFETY

Administrative Action

In the Matter Of

UBS FINANCIAL SERVICES, Inc.

CONSENT ORDER

Pursuant to the authority granted to the Chief of the New Jersey Bureau of Securities ("Bureau") by the Uniform Securities Law (1997) N.J.S.A. 49:3-47 et seq. (the "Securities Law"), and after investigation and review and due consideration of the facts and statutory provisions set forth below, the Bureau Chief has determined that civil monetary penalties and additional monetary and other remedies be assessed against UBS Financial Services, Inc. ("UBS" or the "Firm"). UBS, through counsel, and

the Bureau, now, to avoid the cost and inconvenience of formal judicial and/or administrative proceedings consent to the form and entry of this Consent Order.

WHEREAS, the Bureau is the State agency with responsibility to administer the Securities Law; and

WHEREAS, N.J.S.A. 49:3-68 provides the Bureau Chief with investigative authority necessary to determine whether there exists a violation of the Securities Laws; and

WHEREAS, UBS is a broker-dealer registered in the State of New Jersey; and

WHEREAS, the Bureau has conducted an investigation into the trading activities of UBS in connection with the purchasing, exchanging, and redeeming of mutual funds and the mutual fund-like sub accounts of variable annuity products on behalf of its clients and discovered evidence that the Firm failed to supervise persons associated with the Firm; and

WHEREAS, UBS is continuing to cooperate with the Bureau's ongoing investigation into the activities of the brokers and others, by responding to inquiries, providing documentary

evidence and other materials, and providing the Bureau with access to facts relating to the investigation, books and records, and personnel; and

WHEREAS, UBS has conducted its own internal investigation into the activities set forth herein and initiated internal disciplinary actions against certain individuals involved in that conduct; and

WHEREAS, UBS ceased operational support for market timing activity for all branch offices in December 2002; prior to the onset of the government's investigation into deceptive market timing practices of mutual funds; and

WHEREAS, UBS has agreed to retain Outside Counsel to review and make recommendations regarding the implementation of changes to the Firm's supervisory procedures; and

WHEREAS, N.J.S.A. 49:3-67 authorizes the Bureau Chief from time to time to issue such Orders as are reasonably necessary to carry out the provisions of the Securities Law; and

WHEREAS, the Bureau Chief believes that the sanctions imposed herein are in the public interest, for the protection of

investors and consistent with the policy and purposes intended by the Securities Laws, as provided in N.J.S.A. 49:3-67(b) thereof; and

WHEREAS, UBS admits the jurisdiction of the Bureau, neither admits nor denies the Bureau's allegations, and solely for the purposes of this Consent Order, prior to a hearing on the allegations in the Consent Order and without an adjudication of any issue of law or fact, consents to the entry of this Consent Order and voluntarily waives the following rights:

a. To be afforded an opportunity for hearing on the allegations in the Consent Order after reasonable notice within the meaning of N.J.S.A. 49:3-58(c)(2); and

b. To seek judicial review of, or otherwise challenge or contest, the validity of this Consent Order; and

WHEREAS, UBS agrees that for purposes of this matter, or any future proceedings to enforce the Consent Order, the Consent Order shall have the same effect as if proven and ordered after a full hearing held pursuant to N.J.S.A. 52:14B-1 et seq.; and

WHEREAS, this Consent Order concludes the investigation by the Bureau and any civil or administrative action that could be commenced under the Securities Law on behalf of the State of New Jersey as it relates to seeking civil monetary penalties or other relief against UBS and its current or former affiliates or managers at the level of branch manager or above for the market timing-related activities at UBS.

WHEREAS, the Bureau Chief alleges as follows:

A. Background and Jurisdiction

1. On November 3, 2000, UBS AG acquired PaineWebber Incorporated and changed its name first to UBS PaineWebber, Inc. and, ultimately, to UBS Financial Services, Inc. UBS's retail headquarters are in Weehawken, New Jersey and the Firm is registered as a broker dealer with the Bureau.

2. This matter concerns the Firm's failure to supervise improper market timing activities by certain UBS registered representatives (collectively, the "Brokers") who engaged in deceptive market timing to benefit their customers to the detriment of the affected mutual funds and their non-market timing shareholders. Although UBS facilitated market timing transactions by hedge fund or other Firm customers, it did not

engage in any market timing activities for its own behalf in any proprietary accounts.

3. "Market timing" is an investment technique involving: (i) short-term, "in and out" trading, through purchases, exchanges or redemptions, in a mutual fund, variable annuity, or other product that has mutual funds as its underlying investment vehicle; or (ii) buying or selling of mutual fund shares in order to exploit inefficiencies in mutual fund pricing. Market timing can harm mutual fund shareholders because it can dilute the value of their shares. It can also disrupt the management of the mutual fund's investment portfolio and cause the targeted mutual fund to incur considerable extra costs associated with excessive trading and, as a result, harm the other shareholders in the funds.

4. Market timing is illegal if deception is used to: (i) conceal or attempt to conceal the nature or identity of a transaction from a mutual fund that would otherwise not accept a particular trade or series of trades; or (ii) any attempt is made to induce a mutual fund to accept trades that it otherwise would not accept under its own market timing policies.

5. Beginning in the 1990s, many mutual funds determined that market timing could harm their long-term shareholders. As a result, some mutual funds imposed restrictions on excessive trading and in some instances, disclosed such restrictions in

their prospectuses. In addition, many funds monitored trading activity to detect and stop market timing activity in their funds.

6. Typically, if a fund concluded that a shareholder or its broker had violated its restrictions or was attempting to engage in excessive trading of its funds' shares, it would attempt to prevent, or "stop" additional exchanges by that shareholder or broker. In some instances, mutual funds also rejected certain trades and/or instructed transfer agents not to accept additional trades from certain clients or registered representatives, effectively "blocking" market timing trades.

7. Most mutual funds received trade instructions from UBS through the National Securities Clearing Corporation ("NSCC"), a centralized trade clearance and settlement system that linked the registered representatives, UBS, and virtually all mutual fund companies. NSCC permitted broker-dealers to use a number of different formats or "Network Levels" to transmit trades, as well as the option to transmit different levels of detail about the customer. UBS used Network Level 3, which identified orders by account number, the broker identifying number (known as the Financial Advisor, or "FA," number), and branch code. In the case of mutual fund exchanges, Network Level 3 did not transmit the information underlying these codes, such as the customer's name or tax ID, the FA's name, or branch name or location. This

system afforded market timers a degree of anonymity that they could use to their advantage.

8. Because many mutual funds monitored for excessive trading by the FA number and customer account number, the brokers opened numerous FA split numbers (which identified the UBS registered representatives receiving a split of the Firm's commission on the trade) and misused these numbers to try to deceive mutual fund companies into accepting trades they otherwise may have rejected. The Brokers also opened numerous accounts on behalf of their market timing clients, also for the purpose of trying to avoid detection by the fund companies.

9. Mutual funds tracked trading activity by FA number and customer account number. Therefore, a broker who engaged in market timing activities for a client through the use of a single account number would be more easily detected, increasing the likelihood that further trades would be blocked.

10. As a result, the Brokers and/or their clients pursued a scheme to make it difficult for mutual funds to identify their clients' market timing. Instead of using one FA number and one account number, the Brokers conducted their clients' market timing activities through the use of dozens of customer accounts, often established under various names, and multiple FA split numbers. When a mutual fund succeeded in blocking one FA number or account from further trading, the Brokers used other

FA split numbers and customer accounts to continue trading in violation of the funds' restrictions.

B. Market Timing Activities at UBS

11. Beginning in at least January 2000 and continuing through at least December 2002 (the "Relevant Period"), the Brokers engaged in market timing on behalf of their clients.

12. In or about October 2000, UBS established a market timing operational support desk ("Timing Desk"), which used a "special trading system" to address operational risk and generally assist the Brokers' short term trading. The Timing Desk was located in Weehawken, New Jersey.

13. The employees working at the Timing Desk provided UBS's market timers with a more efficient process for submitting market timing trades at the end of each day and reconciling the trades the next morning.

14. During the Relevant Period, market timing activity by the Brokers on behalf of their clients raised issues with the fund companies. Several mutual fund companies complained about the frequency and volume of trading and identified deceptive trading practices by certain representatives and/or clients. These notices and complaints generally were sent to UBS's Operations area, the Brokers, individuals in UBS's Mutual Funds

Sales and Marketing Area, and in a few instances, to an employee in the Compliance Department. After the notices were received, the Brokers continued to market time, often using deceptive practices to avoid further fund detection. UBS did not have any policies or procedures in place that required individuals in Operations or other departments receiving such notices to alert the Compliance Department or appropriate supervisors.

15. In April 2001, UBS decided to conduct a review of its market timing business. As part of the review process, UBS's director and executive vice president of the Retail Branch Group sent a memorandum (the "April 2001 Memo") to the Firm's branch managers, which requested that they identify any market timing accounts in their branches and stated that:

> "The Firm will not open any new accounts for an investor engaged in a mutual fund timing strategy. As of now, we are placing a moratorium on accepting any new mutual fund market timing accounts."

16. During the period from April 2001 through October 2001, UBS gathered information from branches regarding market timing accounts and, in some instances, the Firm became aware that certain registered representatives were acting improperly. For example, in June 2001, individuals in UBS's Mutual Fund Sales and Marketing area became aware of allegations that certain of the registered representatives were using deceptive

trading practices to avoid detection by mutual funds that sought to stop, limit or curtail their market timing.

17. The deceptive practices, which were used to conceal their own, and their clients', identities, included: (a) use of multiple branch wire code prefixes ("branch codes"); (b) use of multiple FA (financial advisor) numbers; and (c) use of multiple customer accounts. They also included splitting large trades into small trades to avoid detection by the systems that mutual funds used to detect market timing activity.

18. Throughout the Relevant Period, UBS received more than 1,000 notices from mutual fund companies that had identified unwelcome market timing activity and sought to stop or limit the volume of trading. One mutual fund company went so far as to refuse to accept any trades from a particular branch office of UBS. Despite the funds' requests, UBS failed to establish reasonable procedures to ensure that the Brokers complied with those requests.

19. In December 2001, UBS issued a memorandum to all FAs and branch managers announcing that the Firm was no longer going to support mutual fund market timing, and that all market timing accounts must be removed from the Firm by February 2002. UBS also sent a memorandum to certain mutual fund companies that it was stopping its operational support for market timing accounts. As a result, by February 2002, significant assets of market

timing clients had been transferred out of UBS and the Brokers who serviced market timers chose to the leave the Firm. In addition, UBS turned down potential clients who wanted to open market timing accounts.

20. However, UBS permitted one Broker and his market timing clients to remain at the Firm through December 2002, based on representations that his clients would incur large contingent deferred sales charges if they were forced to liquidate their existing fund positions. UBS granted permission without verifying the Broker's representations, scrutinizing the relevant accounts or without placing additional supervisory controls over the Broker's activities. Consequently, the Broker was able to place at least 58,000 market timing transactions on behalf of his customers.

21. UBS failed to make use of existing procedures or to establish appropriate supervisory procedures to: (a) prevent Brokers from opening new accounts for clients after the April 2001 Memo and after being stopped from trading at certain fund companies; (b) monitor daily trade activity in existing accounts after receiving stop letters requesting that those accounts, and their owners, stop trading in the funds; (c) prevent the Brokers from transferring assets between multiple accounts to conceal their market timing activity; (d) monitor whether Brokers whose market timing activities provoked complaints from mutual fund

companies were using multiple branch codes and maintaining trading accounts for market timing clients at multiple branches; (e) monitor whether the assignment of multiple FA split numbers to a Broker, or group of Brokers, had a reasonable business purpose; (f) monitor whether "sticky asset" and other trading agreements with mutual funds were consistent with the disclosures about market timing in the funds' prospectuses or to otherwise ensure that trading was in compliance with the fund prospectuses. A "sticky asset" is a fee generating long term investment used as an inducement to the mutual fund company to provide market timers with timing capacity in the mutual fund complex.

22. As a result of UBS's failure to take appropriate steps to supervise market timing activities, the Brokers and their market timing clients were able to conceal the true nature and scope of their market timing activity from the mutual fund companies.

23. The Brokers' market timing activities benefited them, UBS, and certain of the Firm's customers to the detriment of certain long term mutual fund shareholders, some of whom were also customers of the Firm.

C. UBS's Failure To Supervise Its Three Branches That Produced the Most Revenue From Market Timing

24. Though market timing was a business practice initially supported by UBS, and then restricted to certain registered representatives, seven UBS branches accounted for more than 90% of the more than 300,000 market timing transactions that UBS engaged in on behalf of its clients during the relevant period. Three branches, which are discussed more fully below, engaged in the most egregious conduct. Certain registered representatives at these three branches used a total of seven different branch codes, and more than 50 FA and FA split numbers, to generate more than $18 million of the total gross revenues to UBS from market timing activities.

Chung and Savino

25. Between October 2000 and December 2001, two Brokers, Christopher Chung ("Chung") and William Savino ("Savino"), in the Paramus, New Jersey branch office, headed a group that engaged in multiple schemes to hide the market timing activities of their large hedge fund client Millennium Partners ("Millennium") from the mutual funds whose shares they traded.

26. Chung and Savino used 35 accounts (17 of which were opened after the April 2001 Memo referenced in paragraph 15 above), at least eight variable annuity contracts, at least seven different FA and FA split numbers and two different branch codes, to place close to 16,000 short-term mutual fund transactions in hundreds of mutual funds on behalf of

Millennium. Their trading, which generated nearly $10 million in gross revenue for UBS, made them two of the top ten producing brokers or registered representatives in the Firm.

27. At various times during 2001, Chung and Savino's market timing activities raised issues and concerns in certain parts of UBS's business, including the Operations Department, the Sales and Marketing Department, and the Retail Branch.

28. Their trading activities also caused mutual fund companies to send at least 150 stop letters and nearly 1,000 trade rejections to UBS. Nevertheless, Chung and Savino were permitted to continue their market timing activities at the Firm, with support from the Operations Department, until the end of December 2001. Throughout this period, Chung and Savino were never subjected to enhanced supervision by UBS to ensure that they complied with the mutual funds' requests to cease their market timing activity.

29. On June 15, 2001, in connection with the overall review by UBS of market timing, the Firm considered, but never implemented, a policy to allow only certain, more experienced, registered representatives to continue servicing market timing accounts. In connection with that effort, a UBS employee in the Sales and Marketing area drafted a memorandum to his manager, which identified which registered representatives were qualified to service market timing accounts. In that memorandum, the

employee discussed that Chung and Savino were rejected from the list and noted that Savino's group was

> known for creating multiple ID numbers to avoid detection by fund complexes, being removed consistently from most major fund complexes, and hiding their identity behind other financial advisers' ID numbers. There have also been complaints from the operations area regarding their sales practice.

30. Despite these concerns, on June 19, 2001, Chung and Savino were permitted to open 12 new accounts, all under the same name, to engage in market timing on behalf of Millennium.

31. Furthermore, on June 27, 2001, a UBS manager in Operations sent an electronic mail message ("E-mail") to an individual in the Sales and Marketing area of the Firm advising him that Chung and Savino had used multiple accounts for Millennium to facilitate their timing. He explained:

> On a daily basis, we receive multiple letters, emails and irate phone calls from various mutual fund companies detailing the **continued timing activity** for these reps despite repeated requests for them to stop. Requests to discontinue timing are fairly common. **However, once kicked out by the fund, these reps redeem their assets at the request of the fund and simply repurchase the same fund again for the same client under a new PaineWebber account number.** We believe this is done so that the fund will not recognize the new PaineWebber account….I searched our name and address files to locate the PaineWebber account number and found that each tax ID had several accounts established with the same registration. This would certainly serve to facilitate the

> repurchase of funds under a new PaineWebber account number as described above. (emphasis added)

32. One week later, on July 5, 2001, an individual in UBS's Sales and Marketing area distributed a memorandum to his supervisor regarding Chung and Savino's market timing practices (the "July 2001 Memo"), which highlighted 13 different mutual fund companies that had blocked Chung and Savino from conducting any further business with their fund complex. Among other things, the July 2001 Memo, raised concerns as to the impact on the overall business of UBS, stating:

> This type of activity jeopardizes the relationship between UBS PaineWebber and the various fund complexes who do not condone this type of activity. Chung/Savino are contacted by the Fund Complexes, UBS PaineWebber MF operations areas as well as MF Marketing and Sales instructing they are no longer permitted to make any purchases of their funds for any of their clients but we still see repeated attempts made to try to get trades to go through.

33. Shortly thereafter, the individual sent an E-mail to the branch manager listing the 13 mutual fund companies that had blocked Chung and Savino from conducting any further business with their fund complex.

34. Although UBS received formal requests from 13 fund complexes for Chung and Savino to cease trading their fund

complex, the Firm failed to put any procedures in place to ensure that Chung and Savino complied with those requests. As a result, between July and December 2001 Chung and Savino placed more than 500 additional purchases or exchanges with the 13 fund companies identified in the July 2001 Memo.

35. In August 2001, Chung and Savino entered into a so-called "sticky asset" agreement on behalf of Millennium with Investec Asset Management ("Investec"). This deal permitted Millennium to use $26.5 million to make 2.6 round trips per month in certain funds in exchange for a $26.5 million "sticky asset" investment. The initial investment with Investec provided an upfront commission to UBS of $530,000.

36. In November 2001, the terms of this sticky asset arrangement was shared with Chung and Savino's branch manager and senior managers in UBS's Wealth Management Group, none of whom expressed any concern about the terms of this arrangement or the fact that Chung and Savino had entered into the agreement on behalf of the Firm without clearing it with the Firm's Legal Department.

37. Also in November 2001, Chung and Savino showed their branch manager a matrix which purported to list nearly a dozen similar "timing deals" with different fund companies. Although the branch manager reviewed the matrix, he did nothing to ensure

that the deals, or the market timing trades they permitted, were permissible.

38. The failure of the branch manager and others at the Firm to restrict the activities of Chung and Savino allowed them to continue their deceptive trading practices.

39. As set forth above, UBS issued a memorandum in December 2001 to all registered representatives and branch managers, including Chung and Savino, announcing that UBS was stopping its support for mutual fund market timing, and that all market timing accounts had to be removed from the Firm by February 2002, and issued a second memorandum to certain mutual fund companies with a similar announcement (the "December 2001 Memos"). The memorandum shut down Chung and Savino's business at UBS.

Song Pegg

40. Between August 2000 and January 2002, Broker Carolyn Song Pegg ("Song Pegg") and her market timing group, located in a non-New Jersey branch office, used more than 100 accounts and at least 10 different FA and FA split numbers to place more than 34,000 market timing transactions with numerous mutual funds. The trading was done for the benefit of four clients, and generated nearly $3 million in gross revenue for UBS.

41. Song Pegg's deceptive market timing activities included the use of numbered accounts for anonymity and the

opening of new accounts for "blocked money," i.e., money in an account that no longer has exchange privileges. Song Pegg transferred "blocked money" to new accounts, or other numbered accounts that engaged in market timing activity, but had not been detected by the mutual fund, where it was used for market timing. These deceptive activities were a direct response to the fact that the funds had rejected close to 1,000 of Song Pegg's market timing transactions and had issued nearly 400 stop letters to UBS in connection with Song Pegg's frequent trading.

42. As early as April 27, 2001, four days after the issuance of the April 2001 Memo, Song Pegg's branch manager wrote Song Pegg an E-mail stating:

> I have received two calls today from American Funds and Aetna stopping mutual fund market timing. Both ask we open no new accounts and they are restricting existing accounts… They are now also looking for your name as the broker of record and will assume any account going in under your name is a timer. Additionally, if they find you are using another broker's name, they will stop, bust, redeem or whatever they feel is necessary to stop you from doing business with them, directly or indirectly…. They do not want to deal with any form of circumvention to keep the business going. They are also targeting you not just the clients.

43. Despite knowledge that Song Pegg's market timing was a concern to fund companies and reason to believe she was engaged in some form of "circumvention," the branch manager failed to

implement any enhanced supervision or to put any procedures in place to prevent Song Pegg from engaging in further forms of deception to market time mutual funds.

44. Instead, branch management allowed Song Pegg to open 95 new accounts for one of her market timing clients and 9 new FA numbers, which were used to shield her and her client's identity from fund companies with whom she traded.

45. In June 2001, a manager in Operations wrote to a manager in Sales and Marketing that:

> Carolyn has recently opened a number of accounts that are timing... You will note that each account was established well after April 23, 2001. This was the date of the memo... placing a moratorium on the opening of any new market timing accounts.

46. In spite of the numerous stop notices and other communications that mutual funds sent to Song Pegg's branch, including its branch manager, UBS never put any procedures in place to limit Song Pegg's frequent trading, use of multiple accounts and FA split numbers, or to otherwise ensure that Song Pegg was complying with the mutual funds' requests to stop market timing.

47. A July 24, 2001 internal E-mail reminded Song Pegg and her branch manager that American Century Funds ("American Century") had requested and still requested that Song Pegg not trade their funds. Despite the E-mail, Song Pegg used seven

different FA numbers to place another 422 trades in the American Century fund family from the date of the E-mail to December 2001, when UBS issued the December 2001 Memos announcing that the Firm was stopping its support of mutual fund market timing.

Shedden

48. Between October 1999 and December 2002, Broker Scott Shedden ("Shedden") and his market timing group (the "Shedden Group"), all of whom were employed by UBS, located at a non-New Jersey branch office, used 183 accounts under four different branch codes and at least 38 different FA and FA split numbers to place more than 210,000 market timing transactions with numerous mutual funds. This trading, which was done for the benefit of seven different clients, generated nearly $8 million in gross revenue for UBS.

49. UBS received close to 650 stop letters and more than 1,100 trade rejections as a result of the Shedden Group's market timing activities. Despite the numerous notices from funds to UBS requesting that the Shedden Group cease trading, the Shedden Group continued its market timing activities through the use of different or new accounts with different FA numbers and branch codes.

50. For more than two years, the Shedden Group market timed in an estimated 70 accounts with 22 FA and FA split

numbers, which were coded with prefixes that were different from the prefix of the branch where they were located.

51. During the Relevant Period, the Firm did not effectively supervise or implement procedures to supervise any of Shedden's market timing. This lack of supervision came despite Shedden's branch manager's knowledge that market timing activity was occurring.

52. Further, certain individuals in UBS were aware of Shedden's deceptive use of multiple FA split numbers. For example, Shedden's name also appeared on the June 2001 Sales and Marketing memo discussed above, which identified a list of registered representatives who should be permitted to continue handling market timing business. Shedden was identified as a registered representative who engaged in practices designed to avoid detection by fund complexes and was proposed for rejection from the list. No additional procedures were put in place to supervise the Shedden Group's market timing or to prevent the Shedden Group from deceiving the mutual funds with which it traded. As a result, the Shedden Group continued to use the same forms of deception until December 2002.

53. About two weeks after UBS issued the December 2001 Memoranda, Shedden wrote to a senior manager in the Firm's Private Client group requesting permission to continue to maintain the Shedden Group's clients' market timing accounts at

the Firm so that the accounts would not be assessed contingent deferred sales charges for selling the mutual fund positions in the accounts prior to the required hold period.

54. Despite UBS's disclosures in the December 2001 Memoranda and its representation to mutual fund companies that it was no longer going to support market timing, UBS allowed the Shedden Group to keep its customers' market timing accounts open for another year provided no new accounts would be opened and no new purchases of mutual funds would be made. During that year, 2002, UBS permitted and supported the Shedden Group's continued market timing activity.

55. Despite the issues that had been raised about the Shedden Group's use of deceptive practices to engage in market timing, UBS did not limit Shedden's ability to make mutual fund exchanges or place any additional supervision over Shedden's market timing activities.

56. As a result, the Shedden Group continued to use deceptive practices to market time mutual funds on behalf of Shedden's clients in mutual funds throughout 2002, including the funds that were told that UBS would no longer provide operational support for market timing accounts.

57. In September 2003, in connection with UBS's internal investigation of market timing activity, the Firm discovered, among other things, that Shedden had engaged in deceptive market

timing practices after he was granted the extension. The Firm terminated him for cause in November 2003.

D. UBS's Failure To Supervise Market Timing In Annuity Sub-Accounts and To Keep Records of Transactions In These Accounts

58. During the period that the Brokers were market timing mutual funds, some were also engaged in similar transactions in the mutual fund-like sub-accounts of variable annuities and other insurance products.

59. These Brokers sold large-dollar variable annuity or Corporate Owned Life Insurance ("COLI") contracts to individual and hedge fund customers of UBS. Because each product held mutual fund-like sub-accounts as its underlying investment, it provided an opportunity for market timing.

60. For example, Chung and Savino purchased at least 20 variable annuity contracts and a COLI contract for Millennium Partners, their hedge fund client, through eight different insurance companies. The purchases yielded more than $1 million of revenue to UBS. The contracts gave Chung and Savino authority to trade in the mutual fund-like sub-accounts of the variable annuity or COLI product. Chung and Savino used this authority to place more than 3,000 transactions in the mutual fund-like sub-accounts of these products on behalf of Millennium Partners.

61. The branch manager responsible for supervising Chung and Savino's trading activities was aware of the initial purchase of the variable annuity and COLI contracts. He was also aware that Chung and Savino had the ability to market time the mutual fund-like sub-accounts of these insurance products. Nevertheless, neither the branch manager nor anyone else at UBS put in place a system to maintain records of the trading in the mutual fund sub-accounts of variable annuities or other insurance products. Furthermore, UBS failed to put in place any adequate mechanism to supervise this trading by the Brokers in the sub-accounts.

62. In addition, UBS failed to maintain the confirmations it received of the trades in the sub-accounts of the variable annuities or other insurance products.

63. UBS's failure to maintain these records disadvantaged both its ability to supervise the Brokers' market timing activities and the Bureau's subsequent investigation of that activity.

E. Remedial Actions by the Firm Regarding Market Timing

64. In September 2003, in reaction to the descriptions in the media of deceptive market timing practices, the Firm promptly undertook an internal investigation of its historical market timing practices, which resulted in various remedial measures.

65. As noted above, the Firm detected Shedden's deceptive practices and terminated him in November 2003.

66. The Firm disciplined the relevant branch managers who supervised the Brokers that had engaged in deceptive market timing practices by issuing them letters of reprimand and fines. The Firm also disciplined, via suspensions and letters of education and caution, other employees who appeared to have engaged in small-scale market timing activities inconsistent with the Firm's December 2001 policy.

67. The Firm created new additional policies and procedures in order to prevent any market timing by clients of the Firm. More specifically, the Firm: (1) re-released a memo in the form of a Compliance bulletin in October 2003 stating the Firm's policy that it does not permit market timing; (2) enacted new procedures relating to the issuance of FA split numbers that require the FA to justify the reason for the split, and also require branch manager approval; (3) established a process for mutual fund and annuity stop requests to be routed to a designated employee in the Compliance Department, who monitors Firm employees' compliance with the requests; (4) established quarterly screening by the Compliance Department for frequent trading activity that may have escaped notice of mutual funds; and (5) Established a process to document variable annuity sub-account transaction instructions from clients.

F. UBS's Failure to Maintain Internal E-mail

68. During its investigation, the Bureau and other regulators sought the production of internal and external E-

mails concerning market timing activities during the Relevant Period.

69. Although UBS produced more than 30,000 responsive E-mails ranging in date from January 2001 through December 2003, it did not produce any internal E-mails for the period from September 1999 through August 2001 (the "Missing E-mails").

70. The Firm did not disclose to the Bureau until June 2005 that it had not retained and therefore could not produce the Missing E-mails.

71. UBS's failure to retain and preserve the Missing E-mails disadvantaged the subsequent regulatory investigation by limiting the understanding of what was occurring at the Firm during this period. Among other things, it precluded the Bureau from reviewing communications at the highest levels of UBS's management about the Firm's market timing business during a critical period.

72. UBS's failure to maintain these records disadvantaged both its ability to supervise the Brokers' market timing activities and the Bureau's subsequent investigation of that activity and the Firm's supervisory role.

73. Beginning in approximately November 2001, UBS instituted a firm-wide system to retain internal E-mails.

74. In the last quarter of 2004, the Firm upgraded the relevant systems and has represented to the Bureau that it has

implemented systems, procedures and controls to reasonably ensure compliance with e-mail retention requirements.

FURTHERMORE, solely for the purpose of this Consent Order and without admitting or denying the allegations set forth herein, UBS consents to the following findings and conclusions of law:

1. UBS failed to reasonably supervise its Brokers in violation of its duty under N.J.S.A. 49:3-58(a)(2)(xi) to establish or enforce reasonable supervisory procedures for detecting and preventing the deceptive market timing practices described herein;

2. UBS violated N.J.A.C. 13:47A-1.10 by (a) failing to make and/or preserve accurate books and records reflecting and/or relating to orders and/or confirmations for transactions executed by Firm employees in variable annuity and other insurance product sub-accounts away from the Firm, and (b) failing to maintain internal E-mail prior to August 2001, as required by Section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 thereunder.

THEREFORE, it is, on this, the 11th day of January 2006 ORDERED:

1. Pursuant to the Securities Law, UBS shall pay $49,500,000.00, payable as described below.
2. A sum of $24,750,000.00 shall be payable to the "State of New Jersey, Bureau of Securities" and shall be deposited in the Securities Enforcement Fund established pursuant to N.J.S.A 49:3-66.1 by Friday, January 13, 2006. Of this amount, $12,750,000.00 consists of a civil monetary penalty assessed against UBS, of which $750,000.00 represents the civil monetary penalty for failing to maintain internal E-mail prior to August 2001 and failure to make and/or preserve accurate books and records reflecting and/or relating to orders and/or confirmations for transactions executed by UBS employees in variable annuity and other insurance product sub-accounts away from the Firm. The Firm shall also pay $12,000,000 for investigative costs, investor education, and other enforcement initiatives, for a total sum of $24,750,000.
3. An additional sum of $24,750,000.00 shall be tendered by UBS to the New York Stock Exchange, Inc., (the "Exchange") in a manner and within the time period specified by the Exchange.

3. UBS undertakes to retain outside counsel to review the Firm's procedures concerning the failures to supervise and books and records violations described in this Consent Order and to recommend, as necessary, any additional procedures or policies necessary to ensure that failures to supervise and books and records violations similar to those described in this Consent Order do not re-occur. Outside counsel shall confer with the Bureau and the New York Stock Exchange Department of Enforcement to obtain their views prior to commencing the review. Within 90 days of the execution of the Consent Order, UBS undertakes and agrees to inform the Bureau in writing in a detailed report (the "Report") that it has completed its review and that it has systems and procedures in place reasonably designed to prevent failures to supervise and books and records violations similar to those described in this Consent Order from re-occurring, including, but not limited to: (1) systems and procedures concerning market timing or frequent trading; (2) the issuance and approval of FA split numbers; (3) the routing of mutual fund and annuity stop requests; (4) preservation of variable annuity sub-account transaction instructions received from or submitted on behalf of clients; (5) the preservation of e-mail communications; (6) effectiveness of communications within the branch hierarchy; and (7) effectiveness of communications between compliance and sales. The deadline for compliance with the undertaking set

forth in this paragraph may be extended upon a showing of good cause. A copy of this Report shall be submitted to the Firm's Board of Directors.

4. UBS shall cooperate fully and in good faith with the Bureau in any investigation or litigation by the Bureau relating to the allegations in this Consent Order. Such cooperation will include, but is not limited to, voluntarily making employees available for interviews and/or testimony, producing business and other records within its possession, custody, and/or control in a timely manner as requested by the Bureau, and providing other non-privileged information obtained by UBS in connection with its own investigation. UBS will bear the cost of producing documents, information, and/or witnesses requested by either the Attorney General or the New Jersey Bureau of Securities.

5. Both the Bureau and the Superior Court of New Jersey, Chancery Division, have jurisdiction to enforce the terms of this Consent Order. Any such enforcement action in Superior Court shall be brought in accordance with R. 1:6-2 of the New Jersey Rules of Court governing civil practice.

6. This Consent Order is not intended by the Chief of the Bureau of Securities to subject any Covered Person to any disqualifications under the laws of any state, the District of Columbia or Puerto Rico (collectively, "State"), including without limitation, any disqualifications from relying upon the State registration exemptions or State safe harbor provisions. "Covered Person" means UBS or any of its officers, directors, affiliates, or current employees, or other persons that would otherwise be disqualified as result of the Orders (as defined below).

7. This Consent Order and the Stipulation and Consent issued by the New York Stock Exchange and the order of any other State in related proceedings against the Firm (collectively, the "Orders") shall not be a ground to deny, suspend or revoke the broker-dealer, agent, investment adviser or investment adviser representative registration of any Covered Person pursuant to N.J.S.A. 49:3-58, shall not a ground of denial or revocation of the transactional or securities exemptions from registration in N.J.S.A. 49:3-50, and shall not be a ground to issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any securities registration statement

pursuant to N.J.S.A. 49:3-64.

8. The Orders shall not disqualify UBS from any business that it otherwise is qualified or licensed to perform under applicable state law.

PETER C. HARVEY
ATTORNEY GENERAL
STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY

FOR THE BUREAU OF SECURITIES:
By Order of the Chief of the Bureau of Securities

By: Franklin L. Widmann

Franklin L. Widmann
Chief, Bureau of Securities

January 11, 2006

THE PARTIES CONSENT TO THE FORM, CONTENT, AND ENTRY OF THIS CONSENT ORDER ON THE DATES UNDER THEIR RESPECTIVE SIGNATURES.

PETER C. HARVEY
ATTORNEY GENERAL

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY

FOR THE DIVISION OF LAW:

By: _____

Anna M. Lascurain
Deputy Attorney General
Section Chief
Securities Fraud Prosecution

FOR UBS FINANCIAL SERVICES, INC:

By: _____

Ilene Marquardt
Senior Vice President
Deputy General Counsel
UBS Financial Services, Inc.

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_____

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