

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 76013 / September 29, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16846

In the Matter of

UBS FINANCIAL SERVICES
INCORPORATED OF PUERTO RICO

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”), against UBS Financial Services Incorporated of Puerto Rico (“UBSPR” or “Respondent”).

II.

In anticipation of the institution of these proceedings, UBSPR 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, UBSPR consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and UBSPR’s Offer, the Commission finds¹ that:

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

SUMMARY

1. UBSPR failed reasonably to supervise Jose G. Ramirez Jr. (“Ramirez”) with a view to preventing and detecting his violations of the federal securities laws from at least 2011 through 2013. Ramirez, a UBSPR registered representative, made material misrepresentations and engaged in a fraudulent scheme involving the use of proceeds of non-purpose lines of credit (“LOC”) to purchase securities. UBSPR offered its customers LOCs from a Utah-based affiliate, UBS Bank USA (“BUSA”). UBSPR’s internal policy and the customer’s loan agreements with BUSA prohibited the use of LOC proceeds to purchase, carry, or trade in securities; rather, LOCs were to be used to provide existing customers with liquidity and immediate access to cash to cover other purchases or expenses.

2. However, Ramirez effected a scheme that resulted in an increase to his compensation by soliciting certain customers to use proceeds from LOCs to purchase additional shares in UBSPR closed-end funds (“CEFs”). So that holders can qualify for certain tax benefits, the CEFs predominantly hold Puerto Rico municipal bonds and are only available to Puerto Rico residents. Ramirez misrepresented to certain customers UBSPR’s policy prohibiting the use of LOC proceeds to purchase securities by advising them to transfer money from their UBSPR LOC account to an outside bank account, wait a few days, and then deposit money from the outside bank account into the customer’s UBSPR brokerage account and purchase CEFs. Ramirez also made material misrepresentations to these customers regarding the safety of this strategy and did not disclose the risks of maintenance calls BUSA could make in the event the value of the customer’s account (including its CEF holdings) decreased below specified levels of collateralization. Ramirez offered and sold approximately \$50 million in CEFs to certain customers and made over \$1 million in additional compensation.

3. UBSPR did not establish or implement reasonable procedures and had inadequate systems in place designed to prevent and detect Ramirez’s conduct and his misstatements and omissions advocating the use of LOC proceeds to purchase securities in contravention of UBSPR’s policy and the customers’ agreements with BUSA. Moreover, UBSPR was made aware on at least two occasions that Ramirez may have been violating that policy, yet UBSPR procedures failed to address reasonable follow-up for violations of this policy.

RESPONDENT

4. UBSPR, 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. UBSPR is a subsidiary of UBS Financial Services Inc. (“UBSFSI”), a broker-dealer registered with the Commission.

OTHER INDIVIDUALS AND ENTITIES

5. Jose G. Ramirez Jr., 56, was a registered representative and associated person of UBSPR in UBSPR’s Guaynabo branch and was also a sales manager in that branch for a brief period of time. Ramirez was terminated by UBSPR in January 2014. Ramirez has been permanently barred from association with any FINRA member in any capacity.

6. Ramiro L. Colon, III, 49, was a registered representative and associated person of UBSPR, and was the branch office manager (“BOM”) in UBSPR’s Guaynabo office from 2007 through 2014 where he served as Ramirez’s supervisor. From early 2011 through 2014 Colon was also the BOM of the Ponce and Mayaguez branches in addition to the Guaynabo branch (collectively, the Guaynabo Complex). Since January 2015, Colon is employed as a registered representative and associated person of UBSFSI, and is a financial advisor at UBSFSI and no longer serves in a supervisory capacity.

7. BUSA is a Salt Lake City, Utah-based FDIC-insured industrial bank organized and licensed since 2003. BUSA is regulated by the Utah Department of Financial Institutions, the FDIC and the Consumer Financial Protection Bureau.

8. The CEFs are closed-end investment management companies incorporated and organized under the laws of the Commonwealth of Puerto Rico. Since 1995, UBSPR has offered its customers twenty-three CEFs, nine of which are co-managed CEFs and fourteen of which are sole managed CEFs. UBSPR has served as primary underwriter for the twenty-three CEFs. The CEFs are not eligible margin securities or traded on any exchange or quoted on any quotation service, with UBSPR serving as the main secondary market dealer or liquidity provider. The CEFs are not registered with the Commission.

UBSPR’S LINE OF CREDIT PROGRAM

9. In approximately 2003, BUSA began offering UBSPR brokerage customers a non-purpose line of credit through UBSPR at no initial cost to the customer and at interest rates below interest rates charged for margin loans. UBSPR encouraged registered representatives to open LOCs for new customers. Registered representatives were incentivized to offer LOCs, in part, because they received compensation based on an additional production credit and, in 2013, credit for net new assets when an LOC was drawn upon.

RAMIREZ’S VIOLATIVE CONDUCT

10. From 2011 through 2013, Ramirez offered and sold millions of dollars of CEFs to certain customers while soliciting them to use LOCs to purchase such securities and fraudulently misrepresenting the risks of this strategy to them. Ramirez knew that UBSPR policy and the customers’ agreements with BUSA did not allow customers to use proceeds from the LOCs for the purpose of purchasing securities. Moreover, Ramirez signed LOC application forms misrepresenting that he had explained to those customers that: (1) BUSA can demand repayment of the loan at any time and (2) if the value of the pledged collateral falls below BUSA’s maintenance requirements BUSA may require the customer to deposit additional collateral and/or sell the pledged collateral to repay the loan.

11. Despite the prohibitions on doing so, Ramirez presented to certain customers a way to make additional money by using the LOCs to increase their holdings of the CEFs. Because customers could borrow money through LOCs at rates as low as 1.5 percent and the CEFs were generating tax advantaged returns of greater than 6 percent, there was an arbitrage opportunity for customers and Ramirez also saw an opportunity to increase his production and commissions if customers purchased additional CEF shares with the proceeds of LOCs. To

accomplish his scheme, Ramirez encouraged these customers to withdraw funds from their LOC accounts, deposit those funds into an account at another bank, wait several days, and then re-deposit the funds from the outside bank account into a UBSPR brokerage account and purchase CEFs.

12. Ramirez misrepresented the strategy to numerous customers. When asked about the purpose of the deposit and redeposit, Ramirez explained to certain customers that one could not transfer money from an LOC internally to another UBSPR account. However, Ramirez stated that there was no violation as long as the proceeds were first transferred to an outside bank account. In meetings with these customers, to reassure them of the propriety of his strategy, Ramirez would take a dollar bill out of his wallet and say “if I give you this dollar and you bring [a different dollar] back next month, it’s not the same dollar.” Many of Ramirez’s customers had been with Ramirez for many years and made money by going along with Ramirez’s recommendations and strategies and knew of his standing within UBSPR as a top broker. Therefore, they either wrote a check or requested a wire transfer from their LOC account for deposit into their personal bank accounts at outside banking institutions. Customers then redeposited money into their UBSPR brokerage accounts and Ramirez purchased CEF shares on behalf of his customers contrary to UBSPR policy and their agreement with BUSA.

13. By advising certain customers to use LOC proceeds to purchase CEF shares, Ramirez exposed customers – some of whom were listed in their account documents as being “conservative” with regard to risk tolerance – to a greater risk than they otherwise would have been exposed. From January 2011 through September 2013, Ramirez executed more than 200 trades on behalf of customers in connection with this scheme. By September 2013, these Ramirez customers had received tens of millions of dollars in maintenance calls from BUSA after the value of their CEF shares declined.

UBSPR’S FAILURE REASONABLY TO SUPERVISE

14. UBSPR’s “Credit Line Products WM Americas Compliance Policy” required that a credit line obtained from the firm must be used for purposes other than to purchase, trade, or carry securities. The customers’ agreements with BUSA contained similar prohibitions, which also appeared on the face of the loan checks that customers received. The policy also required that, as part of the application process, registered representatives take reasonable steps to ensure customers understood the risks associated with taking a LOC, including that their collateral may become insufficient due to market declines and, in such circumstances, the customer may be required to increase the collateral, repay funds borrowed and/or sell securities voluntarily or involuntarily via a maintenance call.

15. However, UBSPR’s policy did not provide for how the policy should be implemented nor did it describe steps registered representatives should take to ensure customers understood the risks involved. Although BUSA monitored transfer activity between UBSPR brokerage accounts for potential misuse of LOCs, UBSPR’s policy did not implement any procedures concerning monitoring the proscribed and prohibited conduct when proceeds were transferred outside of UBSPR accounts.

16. UBSPR had inadequate procedures or systems in place to address compliance with its policy after the application process was completed and once the LOC was approved by BUSA. Indeed, UBSPR's Branch Office Managers' Supervisory Manual only addressed the application process and did not speak to the usage of LOCs once approved. Further, supervisors and operations personnel in the Guaynabo branch, where Colon served as supervisor and Ramirez worked, received no reports concerning credit line usage (other than compensation and production), and therefore did not conduct reviews for whether customers were using LOC proceeds to purchase securities, even though they were responsible for making sure registered representatives followed firm policy.

17. In August 2011, an operations manager in the Guaynabo branch questioned a series of transactions in the accounts of a Ramirez customer which she believed could have been the result of improper use of LOC proceeds to purchase securities. The operations manager raised her concerns to her supervisor, the Complex Administrative Manager ("CAM"), who took the information to Colon, who then met with Ramirez and discussed the transaction. Although Ramirez strenuously denied any impropriety, Colon reviewed the customer profile and discussed the activity with the CAM but conducted no additional investigation or monitoring and never discussed with the customer his usage of LOC proceeds or these specific transactions. Weeks later, the operations manager noticed a similar series of transactions by the same Ramirez client. Again, the operations manager raised the issue with the CAM. Upon hearing the concerns, and instead of escalating the issue, the CAM did not raise the issue with Colon or anyone else.

18. In addition, UBSPR failed to establish reasonable policies and procedures for follow-up of indications of misuse of LOCs. In the fall of 2011, the branch office manager in UBSPR's Hato Rey office – UBSPR's main branch – raised concerns to UBSPR's compliance group and asked it to investigate whether UBSPR registered representatives were improperly encouraging customers to use LOC proceeds to purchase securities. The compliance group contacted a compliance officer for BUSA who stated BUSA ran a report with the ability to track whether or not purchases had been made in accounts being used as collateral for LOCs within a certain time from a withdrawal and transfer from the LOC. It was not understood, however, that this report would not have captured the activity at issue because the money was first sent outside the firm before being redeposited and used to purchase securities. Until these events became known, UBSPR did not have a system in place to track LOC money moved outside the firm and then returned to the firm.

19. The Hato Rey manager followed up with the compliance group at various times in 2012 and was ultimately informed that compliance found no improper conduct. However, although certain reports were run, they were not adequately reviewed and, in any event, the Guaynabo branch was not included in the reports because of a clerical mistake that was not noticed. The compliance group's failure to adequately review this LOC information, including activity in the Guaynabo branch, was a significant lapse. Despite having twenty percent fewer registered representatives than UBSPR's headquarters in Hato Rey, Guaynabo branch customers had \$475 million in total LOCs as of July 2013, nearly double Hato Rey's portfolio. Also, Ramirez was UBSPR's leading credit line producer among registered representatives in Puerto Rico during this period.

20. In 2013, the Puerto Rico bond market collapsed. The significant erosion in Puerto Rico bond prices beginning in August 2013 hit Puerto Rico investors hard, and particularly CEF holders, because the CEFs employed leverage up to 50 percent of the total CEF assets.

21. Many of Ramirez's customers with LOCs collateralized by brokerage accounts holding CEFs began receiving maintenance calls starting in August of 2013 and met with UBSPR representatives to discuss outstanding maintenance calls. During these meetings certain customers informed UBSPR representatives, including Colon, that Ramirez solicited them to use proceeds from LOCs to reinvest in additional CEF shares. Ramirez did not inform many of these customers of the risk associated with doing so.

22. As a result of these meetings with customers and related complaints, UBSPR conducted an internal investigation into the conduct alleged in the complaints. This review uncovered further incidences of using LOC proceeds to purchase CEF shares by certain customers of Ramirez. As a result, UBSPR terminated Ramirez and issued to Colon a letter of education for inaction related to this improper use of LOCs.

VIOLATIONS AND FAILURE REASONABLY TO SUPERVISE

23. Under Section 15(b)(4)(E) of the Exchange Act, broker-dealers are responsible for reasonably supervising, with a view to preventing and detecting violations of the federal securities laws, persons subject to their supervision. Respondent was responsible for supervising Ramirez.

24. Ramirez engaged in conduct that violated Section 17(a) of the Securities Act of 1933, which prohibits fraudulent conduct in the offer and sale of securities, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities. Respondent failed reasonably to supervise Ramirez for the purposes of Section 15(b)(4)(E) of the Exchange Act because Respondent failed to establish procedures reasonably designed to prevent and detect Ramirez's violations of the securities laws and failed to have a system to implement any such procedures in a manner that would reasonably be expected to prevent and detect the violations by Ramirez.

AGREEMENT TO COOPERATE

25. 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 this agreement to cooperate.

IV.

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

Accordingly, pursuant to Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. UBSPR is censured.

B. UBSPR shall, within 14 days of the entry of this Order, pay disgorgement of \$1,188,149.41, plus prejudgment interest of \$174,196.97, to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. UBSPR shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$13,637,653.62 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying UBSPR as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Glenn S. Gordon, Division of Enforcement, Securities and Exchange Commission, Miami Regional Office, 801 Brickell Avenue, Suite 1800, Miami, Florida 33131.

C. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, prejudgment interest and penalties referenced in Section IV, Paragraph B above. 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 Securities and Exchange Commission. 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.

By the Commission.

Brent J. Fields
Secretary